

AGENDA

COMMITTEE OF THE WHOLE

Meeting: **3:15 p.m., Tuesday, September 24, 2013**
Glenn S. Dumke Auditorium

Bob Linscheid, Chair
Lou Monville, Vice Chair
Roberta Achtenberg
Talar A. Alexanian
Rebecca D. Eisen
Douglas Faigin
Debra S. Farar
Margaret Fortune
Lupe C. Garcia
Steven M. Glazer
William Hauck
Peter G. Mehas
Hugo N. Morales
J. Lawrence Norton
Cipriano Vargas

Consent Items

Approval of Minutes of Meeting of March 19, 2013

Discussion Items

1. General Counsel's Report, *Information*

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

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

March 19, 2013

Members Present

Bob Linscheid, Chair
Bernadette M. Cheyne
Rebecca D. Eisen
Douglas Faigin
Debra S. Farar
Kenneth Fong
Lupe C. Garcia
Steven M. Glazer
William Hauck
Peter G. Mehas
Henry Mendoza
Lou Monville
J. Lawrence Norton
Ian J. Ruddell
Glen O. Toney
Cipriano Vargas
Timothy P. White, Chancellor

Approval of Minutes

The minutes of meeting of September 18, 2012 were approved as submitted.

General Counsel's Report

General Counsel Helwick presented her semi-annual update on legal issues facing the CSU.

Trustee Glazer inquired about protection against any potential loss in the student fee class-action case, and if there were any reserves set aside. Ms. Helwick explained that the CSU has a Risk Management program, which sets aside reserves for CSU claims, but that because of the nature of this particular claim, the student fee litigation was not covered by the Risk Management program. She remarked that the University of California had covered similar losses by imposing a charge against future students. Trustee Glazer requested some additional thinking about the wisdom of contingency funding for the class action case.

Trustee Eisen asked if there is a process for reporting cases in closed session. General Counsel Helwick responded that there is a litigation exception in the Open Meetings Act, and that it is used whenever trustee input on particular strategies is required.

Chair Linscheid and the members of the board thanked Ms. Helwick for her years of service, and good work.

The committee was adjourned.

COMMITTEE OF THE WHOLE

General Counsel's Report

Presentation By

G. Andrew Jones
Interim 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 76 currently active litigation files, including one case where CSU is the party pursuing relief.

New Cases

Fayek v. CSU, et al.

Butte County Superior Court

Plaintiff, Abdel-Moaty Fayek was a faculty member in the Department of Computer Science at CSU Chico. He contends he entered into a self-funded buy-out agreement with the campus where he would gain industry experience while on an approved leave. From approximately 1997 to 2006, plaintiff received his campus salary and reimbursed it to the Research Foundation as part of the alleged agreement. The campus discovered this arrangement and immediately contacted CalPERS and the State Controller's Office to correct the employee's payroll records. Plaintiff has sued the campus, the Research Foundation, three individual defendants and CalPERS to restore his service credit.

Gibson v. CSU, et al.

Los Angeles County Superior Court

Plaintiff Bruce Gibson is the former Senior Director of Human Resource Services and Systemwide EEO & Whistleblower Compliance. CSU terminated Gibson's employment in September 2012 based on performance. This lawsuit claims the termination was in retaliation for his having made various disclosures he claimed were protected. The case is in the pleading stage.

Rowing Club v. CSU Sacramento, et al.

U.S. District Court, Sacramento

This case arises out of the temporary suspension of the Sacramento State University's Men's Rowing Club. In December 2011, the Rowing Club admitted that they used students that were not Sac State students to practice and compete, which was in direct violation of a CSU sports club rule. The Rowing Club asserts CSU should not have issued the suspension without prior notice and a hearing. This case is in the pleading stage.

Scoras, etc. v. CSU

U.S. District Court, Sacramento

Claudette Scoras is the sister of a former student (Ken Costello) at Sacramento State who is now deceased. She has filed a claim under the Americans with Disabilities Act alleging that CSU failed to provide appropriate accommodation to Mr. Costello and as a result Costello suffered emotional distress and took his life. The case is in the pleading stage.

Williams v. CSU, et al. – California State University, San Bernardino

U.S. District Court, Riverside

On December 8, 2012, Bartholomew Williams, a 38 year old graduate student who self-reported as schizophrenic and bipolar, was fatally shot while university police were trying to effectuate a Welfare and Institutions Code section 5150 detention. Decedent physically resisted and overpowered three officers. The complaint against CSU (and individual defendants) is for wrongful death, including causes of action for battery, negligence, negligent supervision, retention and/or training, violation of the California Constitution, Americans with Disabilities Act, intentional and negligent infliction of emotional distress, and other related causes of action. The case remains in the discovery phase. The trial is scheduled to begin on August 12, 2014.

Construction Cases

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 because 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 completed in summer 2012. CSU has filed a statement of claims seeking \$29 million from the defendants. The case is in the discovery stage. The parties had an initial round of mediation in late June 2013, and will have an additional round in early September 2013.

Employment Cases

Corrales v. CSU

Los Angeles County Superior Court

Gretchen Corrales, a former cross country and track and field assistant coach at CSU Los Angeles, was not renewed in July 2010, because of several NCAA violations. Corrales alleges she was not renewed, and was falsely accused of violating NCAA rules, because she had complained about a sexual relationship between another coach and a track and field athlete and her unequal pay. Corrales has alleged discrimination, sexual favoritism, a failure to investigate or take remedial measures, and retaliation. In November 2012, Corrales was murdered, allegedly by her estranged husband. *Plaintiff's counsel is attempting to substitute plaintiff's children as parties in the case because plaintiff's husband has been declared mentally incompetent. The case remains on hold. A status conference is scheduled for October 7, 2013.*

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 her first lawsuit under various theories, including gender discrimination. That case was settled. This is her second lawsuit in which she alleges she was retaliated against for filing the first lawsuit, because she was excluded from meetings, denied office space, and subjected to other unfair actions. *The case has been set for trial on January 7, 2014.*

Environmental Cases

City of Hayward v. CSU

California Supreme Court

The City of Hayward filed a CEQA challenge to the 2009 CSUEB Master Plan Environmental Impact Report, claiming the University failed to adequately analyze impacts on public services, including police, fire, and emergency services. The City demanded 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 an 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.

In June 2012, the Court of Appeal ruled the CSU East Bay Master Plan EIR is adequate, except for failing to analyze impacts on local recreational facilities. The Court's ruling includes a finding that CSU's determination that new fire protection facilities will not result in significant environmental impacts was supported by substantial evidence. Importantly, the Court also held that the obligation to provide adequate fire and emergency services is the responsibility of the City of Hayward, and the need for additional fire protection services is not an environmental impact that CSU must mitigate. The City and HAPA/OHHA filed a petition for review with the California Supreme Court.

The petition for review was granted in October 2012, but the matter has been deferred pending resolution of the SDSU Master Plan EIR case, which is awaiting oral argument.

City of San Diego, et al. v. CSU
California Supreme 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 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 costs, 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 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 other sources of funding because it was not raised in the underlying administrative proceedings. Del Cerro agreed to dismiss its lawsuit for CSU's waiver of costs; the City of San Diego, SANDAG and MTS appealed.

On December 13, 2011, the Court of Appeal reversed the trial court's decision and ordered the Master Plan be vacated. The California Supreme Court granted CSU's petition to review the case. The matter has been briefed and is awaiting oral argument.

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 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 because a portion of the roadway is on property that will be deeded to the campus in the future. The case is in the briefing phase.

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

Court of Appeal

LandValue 77, a private business entity in Fresno, filed a CEQA challenge to the Campus Pointe project, 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 the environmental impact analysis for Campus Pointe fully complies 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. 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. A revised EIR addressing the court's concerns was circulated for public review and subsequently approved by the Board. In February 2012, the trial court found CSU had addressed all CEQA issues.

LandValue had requested attorneys' fees and costs as the prevailing party. Finding 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. LandValue appealed the attorneys' fees decision. *The matter is fully briefed and is awaiting oral argument.*

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 while moving in to arrest a fellow protestor. She asserts causes of action for excessive force, and assault and battery. *CSU's motion for summary judgment has limited the case to a claim for assault and battery only and the CSU was dismissed from the case, leaving the three individually-named CSU police officers and the LAPD. Trial was set for September 30, 2013, but that date was recently vacated by the court and a new date has not yet been set.*

Naghash v. CSU, et al.

Sacramento County Superior Court

Ashley Naghash, a freshman at CSU Sacramento, alleges 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 court granted CSU's challenge to the sufficiency of the original, first and second amended complaints, but gave plaintiff an opportunity to amend. Plaintiff did not amend her complaint and the court subsequently granted CSU's motion to dismiss and for entry of judgment. Plaintiff has filed a notice of appeal.*

Sanchez-Graves v. CSU, et al.

San Bernardino County 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. CSU filed product liability cross-complaints against three entities that manufactured and sold the camping stove; plaintiff then amended her complaint to name these three entities. The case is in the discovery phase. *Mediation has been set for October 28, 2013; CSU's motion for summary judgment will be heard on November 20, 2013. Trial has been set for January 9, 2014.*

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 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 appealed. *The appeal was dismissed and judgment entered in CSU's favor after briefing and oral argument.*

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 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 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' petition for review with the United States Supreme Court was denied. The case is back in the discovery stage. The court permitted discovery to be reopened to address the issues specified in the Ninth Circuit's decision (whether plaintiffs were treated differently than other groups). *After reviewing the additional discovery, the plaintiffs dismissed their case.*

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/or students received financial aid to cover their increased fees. The two subclasses comprise 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 was provided to the class members. After plaintiffs changed their legal theories to add alternative contract formation arguments, CSU's motion to decertify the class was denied. *The case remains in the discovery phase. Plaintiffs filed a motion for partial summary judgment, which will be heard in January 2014. Trial has been set for June 16, 2014.*

Other Cases

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 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.

Western Association of Schools & Colleges v. CSU, et al.

Los Angeles County Superior Court

John Sheehan submitted requests for records under the California Public Records Act to multiple CSU campuses, seeking communications between campus personnel and the Western Association of Schools & Colleges. CSU agreed to produce some of the requested records. WASC filed a writ petition to seek a court order barring disclosure of all the records, alleging the documents regarding accreditation issues are confidential and proprietary. *WASC dismissed the case in July 2013.*