

CORRECTED

AGENDA

COMMITTEE OF THE WHOLE

Meeting: 1:15 p.m., Tuesday, September 18, 2012
Glenn S. Dumke Auditorium

Bob Linscheid, Chair
Roberta Achtenberg
Bernadette M. Cheyne
Debra S. Farar
Kenneth Fong
Margaret Fortune
Lupe C. Garcia
Steven M. Glazer
Melinda Guzman
William Hauck
Peter G. Mehas
Henry Mendoza
Lou Monville
Hugo N. Morales
J. Lawrence Norton
Charles B. Reed, Chancellor
Jillian L. Ruddell
Glen O. Toney
Cipriano Vargas

Consent Items

Approval of Minutes of Meeting of March 20, 2012

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 20, 2012

Members Present

William Hauck, Acting Chair
Roberta Achtenberg
Carol R. Chandler
Bernadette M. Cheyne
Steven J. Dixon
Debra S. Farar
Kenneth Fong
Margaret Fortune
Steven M. Glazer
Melinda Guzman
Peter G. Mehas
Henry Mendoza
Lou Monville
Charles B. Reed, Chancellor
Jillian L. Ruddell
Glen O. Toney

Approval of Minutes

The minutes of September 20, 2011, 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.

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 that 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 63 currently active litigation files; in two, CSU is the party pursuing relief.

New 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 that 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. The case is in the discovery phase.

Gromacki v. CSU, et al.

Orange County Superior Court

Michelle Gromacki, the former head softball coach at CSU Fullerton, was placed on paid administrative leave in February 2011 because of potential misconduct. She alleges that this action was intended to harass and retaliate against her because she had complained about the inequities between women's softball and men's baseball. Gromacki also raises a breach of contract claim stemming from the 10% reduction in pay as a result of furloughs imposed on all CSU employees during the 2009-2010 fiscal year, and alleges that the deterioration in her

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performance during her three-year appointment was a result of a head injury she suffered while working, which CSU allegedly failed to address or accommodate. Her lawsuit was filed and served two weeks before her three year appointment ended. Her appointment was not renewed. This case is in the discovery phase.

Mattiuzzi v. CSU Sacramento
Sacramento Superior Court

This is a petition filed by Paul Mattiuzzi, husband of faculty member Cici Mattiuzzi (who has her own lawsuit described below), for disclosure under the Public Records Act of billing records from an investigator and an attorney retained by the University. The petition was filed in April 2012, and has not yet been served.

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 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 completed in summer 2012. CSU has filed a statement of claims seeking \$29 million from the defendants. The case is in the discovery stage.

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 - 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 for the project cost exceeding 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 was PCL's claim against CSU for allegedly improperly withholding contractual payment to cover flood damage that CSU alleges UMM caused. *The parties settled this remaining flood damage claim by deducting \$320,000 from the amount CSU owed PCL.**

Employment Cases

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 against the University under various theories, including gender discrimination. That case was settled. Mattiuzzi has now filed a 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 discovery cut off has passed and the matter is set for trial on March 19, 2013.*

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 settled at mediation. Cal Poly will pay Noori \$15,000 and the full cost of mediation (\$2,200).*

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 settled for \$70,000.00. In addition, Plaintiff will receive an increase to base pay of \$5,049 per year. Moreover, she has been appointed as director of the campus poetry center for a three-year term without additional compensation.

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Riolli v. CSU, et al.

Sacramento County Superior Court

Laura Riolli is a faculty member at CSU Sacramento. Following a similar and successful claim brought by one of her Business School colleagues, Riolli 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. CSU filed a motion for summary judgment which is set for hearing on October 11, 2012; trial is set for April 16, 2013.*

Schulter v. CSU, et al.

U.S. District Court, San Jose

Martin Schulte, 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. *Discovery is closed. The court has ordered mediation for late September 2012. The case is scheduled for trial in February 2013.*

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 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 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.

In June 2012, the Court of Appeal ruled that the CSU East Bay Master Plan Environmental Impact Report is adequate, except for the failure 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 for which CSU is required to mitigate. The City of Hayward has petitioned the California Supreme Court for review.

City of San Diego, et al. v. CSU

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 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 in the underlying administrative proceedings. Del Cerro agreed to dismiss its lawsuit in exchange 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 Supreme Court granted CSU's petition to review the case. The appeal is in the briefing 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 briefing phase.*

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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 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. 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 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. LandValue appealed the attorneys' fees decision. *The appeal is in the briefing stage.*

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.

In August 2012, plaintiff petitioned the court to allow her to amend the complaint to add a claim for negligence and bring in additional CSUN police officers as named defendants; the hearing

on that motion is set for September 26, 2012. CSU's Motion for Summary Judgment will be heard on October 11, 2012; trial has been set for March 11, 2013.

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. *The case is in the discovery stage and the parties are discussing settlement.*

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 court granted CSU's challenge to the sufficiency of the pleading, but gave plaintiff an opportunity to amend. CSU subsequently filed a motion to dismiss plaintiff's amended complaint and a hearing has been set for November 15, 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 parties settled the case at mediation for \$1.7 million. \$700,000 was paid as a lump sum, and the remaining \$1,000,000 was used to purchase an annuity with a guaranteed value to her of \$2,437,565.

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

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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. *At a May 29, 2012 mediation, the case settled for \$2,000,000, with \$1,500,000 paid by CSU and \$500,000 paid by Clown Action Productions.*

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 is preparing a product liability cross-complaint against the manufacturer of the camping stove. A trial setting conference has been set for December 4, 2012.*

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, 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. *In March 2012, the Court of Appeal affirmed the judgment, concluding the case.*

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 appealed.*

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 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' petition for review with the United States Supreme Court was denied on March 19, 2012. Plaintiffs have taken no further action to reactivate this case in the District Court.*

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 was provided to the class members. After plaintiffs changed their legal theories to add alternative contract formation arguments, CSU filed a motion to decertify the class, which was denied. *The case remains in the discovery phase.*

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Other 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 settled in April 2012, without any payment of money by CSU. CSU agreed to use best efforts to ensure the media is present in any alternative meeting areas.*

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

The outcome in one administrative hearing during this reporting period raised significant public policy issues that have broad impact on the CSU system.

CFA v. CSU

The California Faculty Association filed an unfair labor practice charge complaining that CSU unilaterally imposed a new per-student pay structure in the Early Start program. The case was settled with CSU's confirmation that it will pay Early Start instructors on a per-unit basis, as provided in the collective bargaining agreement. The new CFA contract will continue the same per-unit pay structure for Early Start instructors.