

I want to be clear, if anybody thinks that I was "requesting that you file it", I said what I thought, that I was willing to entertain it because I wanted some things looked at.

That, no more, no less. I'm not being critical, I just want to be clear. I didn't interpret and I don't today interpret my words as requesting you to file a motion for reconsideration and so with that, Mr. Seryak you may proceed.

MR. SERYAK: Thank you, your Honor. I will say then, I misunderstood the Court's desires on that. Judge, joining me today is Dean Caminker from the law school. I really wouldn't have burdened the Court with another motion and so I'll be very brief.

THE COURT: Let me be honest about it. We didn't discuss it before. I mean, there is some nuance here in this case that you know was covered before and again here. It's not a claim -- I mean it's a claim of discrimination and it's not a claim of discrimination. I mean, that's -- and frankly in my own mind I want to try to grapple with this and understand exactly what this claim is and so that's where I think we get into an issue of, it's not an Elliot Larson case.

MR. SERYAK: Correct.

THE COURT: That's why maybe it's just a tad more

sophisticated and a little more tricky and so I want to be comfortable with the outcome, that's why I invite you and in good faith I thought I was inviting Mr. Green to further address exactly the essence of the claims and whatever documentation. By the way, I'm going to again the second time, deny the motion to strike. I will agree with you, I mean much of that would never -- I shouldn't say much, I don't want to be imprecise here, not 51 percent.

Clearly, a portion of what was contained in the affidavit is admissible, could come in either directly through the plaintiff or through other witnesses, but as you've noted, his impressions, opinions, visceral reactions, I don't think anyone used that word however, those would not be. I think it would be inappropriate of me to strike the entire affidavit and all the attachments and I don't know, I'm not going to quantify it beyond that, but I would say at least 51 percent of what was submitted probably either -- well, it's directly admissible through some of the proposed witnesses indicated or through other persons who at least have been listed somewhere in this proceeding, who could testify to some of those matters.

As I say, I would agree that some of it clearly is just his reactions to a situation, which while interesting may be -- may not be relevant or material to the issues

before the Court, at least before somebody talks about damages or mental distress, turmoil, whatever you want. You know, however one wants to characterize that, so I'm going to deny that part of the motion.

MR. SERYAK: Judge, I do want to make it clear, we did not take the Court's comments in March as anything other than in good faith on the part of the Court.

THE COURT: I'm not suggesting -- I'm not suggesting that. Obviously, it's pretty apparent that a lot of work went into your motion, a lot of thought and consideration, as well as the response filed on behalf of the plaintiff. I have to say, this is not an unimportant case. This is not somebody walking down the street who tripped and injured their right ankle. I think there is considerable significance in the context of this case and so that's one of the reasons why I wanted to hear a little bit more about it.

MR. SERYAK: Thank you, Judge. I think, your Honor is right. My understanding, at least of the Michigan statutes, that would be primarily Elliot Larson and the common law, is that there is no cause of action for discrimination and employment on the basis of sexual preference. The University's statement and its policy, that we have a commitment not to do so, our initial argument was

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

PETER J. HAMMER,

Plaintiff-Appellee/Cross-Appellant

Court of Appeals No. 272801

Lower Court No. 04-241-MK
Hon. James R. Giddings

v.

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN,** a body politic,

Defendant-Appellant/Cross-Appellee

GREEN, GREEN, ADAMS & KENT, P.C.

By: Philip Green (P14316)
Attorneys for Plaintiff
900 Victors Way, Suite 240
Ann Arbor, MI 48108
(734) 665-4036
(734) 665-1075 (Fax)

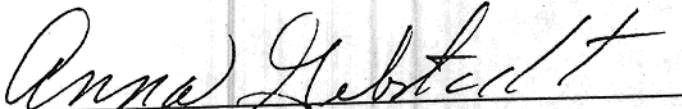
**MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.**

Richard J. Seryak (P26152)
Attorney for Defendant
150 W. Jefferson Ave., Ste. 2500
Detroit, MI 48226
(313) 963-6420

PROOF OF SERVICE

Anna Gebstadt, affirmatively states that on November 28, 2006, she served a copy of **Appellee/Cross-Appellant's** Motion For Immediate Consideration; Brief in Support of Motion for Immediate Reconsideration; Motion to Vacate Order Granting Leave to Appeal; Brief in Support of Motion to Vacate Order Granting Leave to Appeal and this **Proof of Service** on Mr. Richard J. Seryak, 150 W. Jefferson, Suite 2500, Detroit, MI 48226 by enclosing the same via first class mail in a post office box located in the City of Ann Arbor via first class mail.

My signature serves as my oath and affirmation.


Anna Gebstadt