

# Large Loss Report 2012

The 2012 *Large Loss Report* summarizes major damage awards and settlements exceeding \$250,000 that affected schools, colleges, and universities in 2011. Many of the awards exceed \$1 million; one case related to Fair Credit Report Act violations reached nearly \$6 million. Although the Phoebe Prince settlement did not exceed \$250,000, we have included it because the bullying and suicide case received international attention and resulted in strong anti-bullying efforts.

Since the release of this report, some of the outcomes may have changed as a result of subsequent legal proceedings. Whatever the outcome, the expense can be significant, as defense costs, which are not included in this report, can also be substantial. In many cases, plaintiffs' legal fees were awarded as well.

These descriptions are drawn from published accounts, and most do not involve United Educators (UE) members. However, they do reflect trends UE has seen among its claims. Many of the complaints involved discrimination, harassment, negligence, retaliation, or sexual abuse and assaults.

The *Large Loss Report* also reflects trends shown in Equal Employment Opportunity Commission (EEOC) data. Many of the EEOC cases, which do not relate to education, involved sex and race discrimination and harassment, and retaliation. Others represented poor hiring and firing practices. Summaries of settlements and judgments that were brought by the EEOC are included in this report to illustrate trends in employment litigation.

## Education Awards and Settlements

### Abuse

- The **Washington South Supervisory Union** and the **Roxbury School District** in Vermont reached a **\$1 million** settlement with a 17-year-old high school junior who claimed that officials did not report suspicions of sexual abuse to the state as required by law. According to the lawsuit, a principal, teacher, and counselor at Roxbury Village School suspected in 2003 that the boy was being sexually abused, but did not report it for more than a year. His uncle continued to sexually assault the boy, who was 10 and 11 years old at the time. The uncle pleaded guilty in 2006 to two charges of aggravated sexual assault and is in prison. The boy now lives with a foster family.
- **Detroit Public Schools** will pay **\$650,000** to a former superintendent who lost her job shortly after she claimed the school board president repeatedly fondled himself in front of her during a private meeting. The accused man was sentenced to two years of probation after he pleaded guilty to a felony charge of misconduct in office.

## Largest Losses: A Retrospective

United Educators has been publishing the facts about large losses affecting schools, colleges, and universities for the past 18 years. As we celebrate 25 years of defending our members against these high-dollar, and often high-profile, claims, we take a look back at some former reports of large losses.

The cases below represent the largest settlements from each of UE's prior large loss reports, most of which do not involve UE members. Some of the perennial issues facing education—assault, retaliation, tenure denial, and transportation—have cost institutions millions of dollars in legal fees and settlements and untold amounts in reputational damage. UE remains committed to partnering with our members to prevent losses and provide timely, appropriate response to help mitigate damage when incidents occur.

- \$5.3 million awarded to former professor claiming emotional distress after pressure by the administration to change a student's grade on a midterm test

### Bullying

- The **parents of Phoebe Prince**, a 15-year-old girl who committed suicide in January 2010 after months of bullying at South Hadley High School in Massachusetts, settled a lawsuit with their daughter's school district for **\$225,000**. In July 2010, Prince's parents filed a complaint against the **South Hadley Public School District** with the Massachusetts Commission Against Discrimination. They claimed that the school district did not protect their daughter after receiving reports of multiple incidents of bullying.

### Defamation

- The **University of Michigan** and a nontenured professor in the Department of Pediatrics reached a **\$550,000** settlement agreement in a civil lawsuit in which the professor accused the school of fraud and defamation. He said a mentor plagiarized his research in grant reports to federal funding agencies and that he was removed from projects. The school denied the professor's accusations but posted a public apology on its website.

### Discrimination

- The **Easton Area School Board** in Pennsylvania approved a **\$650,000** settlement in a former administrator's discrimination lawsuit. The district's solicitor said \$250,000 will be paid from district funds, and insurance policies will cover the rest. The former human resources director said she was fired in 2008 for fighting the district's discriminatory practices. She will receive \$325,000 in general damages, \$103,000 in back pay, and \$222,000 in legal fees.
- **Texas Tech University** must pay more than **\$500,000** to a former assistant professor after a Lubbock County jury found that the school discriminated against him because he is deaf. The school had dismissed the tenure-track American Sign Language teacher in 2006. He filed a lawsuit in 2008. The jury found that the professor's disability was a motivating factor in the university's decision not to reappoint him and that it would not have made that decision in the absence of his disability. The jury awarded the professor \$47,651 in back pay, \$100,000 in front pay, and \$400,000 in past compensatory damages, saying that his disability was the reason the school didn't reappoint him.
- **Woodland Hills School District** in Pennsylvania has agreed to pay **\$465,000** to settle a lawsuit brought by the parents of an elementary school student who is autistic and mentally disabled. The parents claim the district made little attempt to develop an adequate education plan for their 6-year-old son and refused to place him in the Pace School, a private nonprofit school for special-needs children.

- \$7.5 million wrongful death claim by parents of 17-year-old soccer player killed in vehicle accident while traveling to a tournament
- \$10 million award to a victim of sexual assault during a sleep-away camp on a college campus
- \$10.25 million loss involving defamation claim by former teacher at private secondary school
- \$11.4 million assault case by high school student who was beaten by three other students, resulting in permanent cognitive damage
- \$12.7 million jury award in female chemistry professor tenure denial case
- \$18 million awarded to a middle school teacher falsely accused of kidnapping and assaulting a student

- **Savannah State University** paid **\$350,000** to settle a federal discrimination lawsuit with a former football coach who claimed that the historically black college fired him because he's white. The settlement included \$110,000 paid to the coach's attorneys. The former coach became the university's first white football coach in 2007 and held the position for two years. He resigned in January 2010 after signing a one-year contract extension, citing personal reasons. Four months later, he filed a lawsuit in U.S. District Court that claimed university administrators told him to resign or face being fired. He said administrators told him that alumni wouldn't support him because of his race and that Savannah residents wouldn't approve of his engagement to a black woman.
- **Bethel Park School District** in Pennsylvania paid **\$270,000** to settle an elementary school teacher's claim that the district repeatedly refused to hire her because of her age. The terms of the settlement include paying \$189,000 to the 58-year-old teacher and \$81,000 to her attorney. The teacher claimed that she started working for the district as a substitute teacher in 1999 but had been passed over for several permanent teaching positions since 2002.

## Harassment

- **A former secretary at El Camino College** near Torrance, Calif., who accused her boss of sexual harassment, will receive **\$2.5 million** in a settlement with the community college. The secretary said the former dean subjected her to more than two years of sexual harassment and allegedly raped her in his locked office. The school will pay about a third of the settlement, \$833,000, and its insurance company will pay most of the rest, although the dean was ordered to pay \$25,000. The 33-year-old woman said from 2007 to 2009 the 74-year-old dean groped her, demanded sex on his birthday, and threatened to fire her or downgrade her performance review if she refused to have sex with him. The dean contended that the relationship was consensual.
- The **New Haven Unified School District** in California agreed to pay **\$725,000** to 12 African-American students and their families who said the district did not protect them from racial harassment and violence. According to the lawsuit, the school district ignored complaints that a mostly Latino gang was attacking black students on campus. In 2007, one 14-year-old was shot and killed on the steps of Barnard-White Middle School. Three of the plaintiffs accompanied the boy who was slain, and the school district had been warned that students would be attacked that day. Another plaintiff was attacked by a gang member

- \$20 million in out-of-court settlements to families of seven high school students killed when a commuter train crashed into their school bus
- \$20 million loss involving student who was paralyzed participating in school gymnastics
- \$20 million medical malpractice case from university medical center
- \$26.5 million paid by a university to the federal government for breach of contract; a professor and staff member found guilty of fraud for making personal investments with grant money
- \$36 million award in retaliation case by two former employees of state technical college
- \$38 million in refunds and interest paid to 2,900 professional-school students who claimed professional degree fees were raised despite a pledge to keep the fees level

near the high school principal's office in 2009. The district agreed to require high school students and visitors to carry identification on campus, start a high school class on "restorative remedial justice" and gang violence, and train teachers on gang-related issues.

## Hiring and Firing

- **First Group America**, whose subsidiaries provide school bus drivers, has settled a **\$5.9 million** class action lawsuit for Fair Credit Report Act claims. After legal fees and administrative costs are deducted, employees and job applicants for two of the Cincinnati-based company's subsidiaries will share \$4.3 million. According to the lawsuit, the subsidiaries obtained unauthorized criminal background checks of drivers and other job applicants. In addition, they denied jobs to some applicants without providing a copy of their criminal background report.
- A former **University of South Florida** football coach reached a **\$2.75 million** settlement in a lawsuit he filed against the school after it fired him in January 2010. He will receive \$2 million for salary and benefits and \$750,000 for his contributions in building the team, attorneys reported. The university accused him of grabbing a player by the throat and slapping him in the face during halftime of a game and then lying about the incident. The coach had just completed the second season of a seven-year, \$12.6 million contract. The NFL's San Francisco 49ers hired him eight days after the settlement.
- **Kansas State University (KSU)** has reached a **\$1.65 million** lump-sum settlement in its lawsuit with a former football coach. He also received a **\$1.2 million** contract buyout. The coach worked at KSU for three seasons before he was fired in 2008. The university had tried to prevent the coach from receiving deferred payments of \$3.2 million through an arrangement he had made with a former athletic director before being fired by KSU. That deal was unauthorized, according to the university. KSU will pay the settlement from conference and NCAA revenue, not individual donations or ticket revenue, the university said.

## Negligence

- **The Ohio State University (OSU)** will pay **\$1 million** to settle with the parents of a student who was crushed to death in a malfunctioning residence hall elevator in 2006. The freshman became wedged between the elevator's ceiling and a lobby floor when the elevator fell as he was trying to step off. The Ohio Department of Commerce said the elevator's main brake had

- \$78.5 million paid to settle a whistle-blower lawsuit related to the Higher Education Act
- \$90 million paid to heirs of a university donor in dispute over the handling of the family's endowment
- \$105 million verdict against a private academy in sex abuse case involving up to 13 former students

UE members can work to prevent such claims—and more—through the comprehensive risk management resources available on the UE website. Go to the [Learn@UE](#) section at [www.ue.org](http://www.ue.org) for more than 800 articles, podcasts, webinars, roundtables, and online courses on the issues that matter most to education.

failed. Under the agreement, the following third-party defendants will pay settlements to OSU: Otis Elevator Co., \$387,500; Abell Elevator Service Co., \$100,000; Kone Inc., \$50,000; Hanbury Evans Wright Vlattas & Co., \$25,000; and C&N Construction Services Inc., \$50,000. Following the accident, the university reviewed its policies on elevator upgrades, repairs, and emergency calls. OSU now posts safety messages inside all elevators and posts extra messages outside dormitory elevators. In addition, the university discusses elevator safety with all students moving into a dorm.

- The **Broward School District** in Fort Lauderdale, Fla., approved a **\$525,000** settlement for the family of a student who was fatally shot at school by an estranged friend. The girl's parents filed the lawsuit, claiming that school officials ignored warnings that a student was planning to bring a weapon to school. The shooter was convicted of second-degree murder and sentenced to 25 years in prison.
- The commonwealth of **Virginia** will pay **\$250,000** and create a **\$100,000** scholarship fund to settle a \$43 million wrongful death lawsuit brought against Virginia Tech by the family of a student who committed suicide in 2007. The family brought the civil suit in Fairfax County Circuit Court in 2009 to "learn why Tech didn't follow its protocols" in responding to a warning that the student was suicidal, the plaintiff's attorney wrote. His parents alleged that Tech officials were negligent in responding to an explicit warning that their son had threatened to kill himself. A police officer who conducted a wellness check testified that the student denied being suicidal and that he didn't appear to be in distress. His case was closed on Nov. 12, 2007, without the recommended visit with counselors. The family's attorney said the student's parents were not notified about the complaint or the investigation.

## Retaliation

- A federal jury awarded a former history professor at **Madison Area Technical College (MATC)** in Wisconsin **\$1.1 million**, finding that he lost his job for complaining about religious harassment and discrimination. The jury said the dean retaliated against the professor after he complained that two colleagues had made derogatory comments about his religion, Judaism. The award included damages for emotional distress and future career loss. MATC said the dean, who has since resigned, decided not to renew the professor's contract in 2009 because of his performance and student complaints. A judge was to determine whether the professor, who is unemployed, should be reinstated and recover any lost wages or employment benefits.

- A former principal at **Charles E. Brimm Medical Arts High School** in Camden, N.J., who accused his superiors of pressuring him to alter test scores, will receive **\$860,000** to settle a lawsuit he filed after his dismissal. School officials said he was fired in 2006 for poor job performance, but the principal maintained that the school retaliated against him for exposing an order to tamper with proficiency assessment test grades.
- A Washtenaw County, Mich., jury awarded approximately **\$418,000**, including lost wages and damages, to a former **Ave Maria College** administrator who sued the school for firing her in retaliation for cooperating with a federal investigation that found financial aid violations. The jury found that the college violated a state law designed to protect employees who reveal wrongdoing in the workplace. The award could grow to more than \$500,000 with interest and attorney fees. The director of financial aid filed her whistle-blower lawsuit in 2004 when the college eliminated her position, shortly after the U.S. Department of Education fined the college and ordered it to repay almost \$250,000 for improperly issued aid. The college said letting her go wasn't retribution but was based on plans to phase out the Ann Arbor Township campus and reopen the school as Ave Maria University near Naples, Fla.

## Whistle-Blower

- **Point Park University** in Pittsburgh agreed to pay **\$1.4 million** to settle a lawsuit claiming it systematically excluded commuter and part-time students from receiving federal student aid grants. The university's former senior director of student financial services sued the university in 2010 on behalf of the federal government, claiming the school submitted false claims to the Department of Education to receive federal dollars. The woman also sued the university for firing her after she reported the practices. The settlement in that case is confidential, her attorney said.
- The **Brownsville (Texas) Independent School District** settled a former administrator's whistle-blower lawsuit for **\$300,000**. The district rehired the administrator at a level similar to his previous position. The administrator filed a whistle-blower lawsuit in 2010, claiming the district fired him in retaliation for disclosures he made about mismanagement and fraud in the special education department.

## Equal Employment Opportunity Commission

Among the other developments in employment cases in 2011 were the following in which the EEOC sought settlements or awards on behalf of parties alleging workplace discrimination. Even though these cases do not involve education, they illustrate some trends in employment discrimination cases. EEOC settlements that exceeded \$500,000 include:

- **\$20 million** by **Verizon Communications** to resolve a nationwide class disability discrimination lawsuit which charged that the company unlawfully denied reasonable accommodations to hundreds of employees and disciplined and/or fired them pursuant to Verizon's "no fault" attendance plans. The consent decree represents the largest disability discrimination settlement in a single lawsuit in EEOC history.



- **\$8 million** by **Telemarketer International Profit Associates (IPA)** in a sexual harassment case involving 82 female employees. The average of all payments per victim will be approximately \$100,000, according to the EEOC, which claimed that IPA had a pattern of sexually harassing female workers through sexual assaults and propositions, inappropriate touching, and crude sexual comments.
- **\$6 million** by **New United Motors & Manufacturing Inc. (NUMMI)**, California's last auto plant, to settle a class settlement resolving complaints that the company violated the Americans with Disabilities Act when it denied severance benefits to employees on medical leave. According to the EEOC, when the Fremont facility closed, employees received a severance package based on whether they worked during the last six months of NUMMI's operation as well as their years of service.
- **\$3.2 million** by **Supervalu Inc., American Drug Stores LLC, and Jewel Food Stores Inc.** (collectively referred to as "Jewel-Osco") in a disability discrimination lawsuit. According to the EEOC, Jewel-Osco had a policy and practice of terminating employees with disabilities at the end of medical leaves of absence.
- **\$2 million** consent judgment with **Blockbuster Inc.** to settle an employment discrimination lawsuit in which the EEOC charged the Dallas-based global entertainment retailer with subjecting female temporary employees to sexual harassment, retaliating against them for resisting sexual advances and complaining, and subjecting Hispanic temporary employees to national origin and race harassment and other discrimination.
- **\$1.95 million** by **U.S. Security Associates Inc.**, a national security guard service based in Atlanta, to settle a sexual harassment lawsuit. The EEOC claimed that a district manager sexually harassed several female employees by subjecting them to unwelcome sexual demands, demeaning gestures, inappropriate touching, and other sexually offensive conduct.
- **\$1.5 million** in a sexual harassment and retaliation verdict against **Mid-American Specialties**, which distributes promotional products and office supplies. The EEOC charged Mid-American with subjecting three former female employees to sexual harassment and retaliating against two of the women for reporting the harassment.
- **\$1.3 million** by nationwide restaurant chain **Denny's Inc.** to settle a disability discrimination lawsuit in which the EEOC charged that Denny's refused to provide a restaurant manager in Baltimore with legally required reasonable accommodations for her disability, a leg amputation. The company prohibited her from working in its restaurants because of her disability, despite her desire to return to work, the EEOC said, and then fired her because of her disability.
- **\$1.3 million** in a sexual harassment lawsuit verdict against **Paul's Big M** grocery store in Oswego, N.Y. The EEOC charged that a class of female employees, many of whom were in high school, was subjected to a sexually hostile work environment by the store's general manager for more than 10 years.

- **\$1 million** by **Cavalier Telephone Company Inc.** to settle an age-discrimination lawsuit, in which the EEOC claims that since May 2003, the company's mid-Atlantic region had a practice of not hiring applicants age 40 or older for sales account executive positions. The EEOC charged that Cavalier indicated both verbally and in writing that the company was looking for candidates for its sales positions who were "recent college graduates," and in their "early 20s or 30s."
- **\$900,000** agreement with **M. Slavin & Sons Ltd.**, doing business as **M. Slavin & Sons Fish**, a retail and wholesale fish market, to settle an employment discrimination suit in which the EEOC charged that the company created a hostile work environment for more than 30 black and African male loaders and drivers.
- **\$600,000** by **AutoZone Inc.** for failing to provide a reasonable accommodation to a disabled sales manager. The presiding judge was to decide an additional claim for \$115,000 in back pay at a later date. The EEOC charged AutoZone with requiring a sales manager to perform certain cleaning tasks, including mopping floors, which violated his medical restrictions.
- **\$530,000** by the **Garfield Medical Center**, an acute-care facility in Monterey Park, Calif., to settle a lawsuit alleging the sexual harassment of its staff. The EEOC claimed that several of the female targets were either retaliated against or compelled to quit after hospital management ignored their complaints.

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