

Large Loss Report 2013

The 2013 *Large Loss Report* summarizes major damage awards and settlements exceeding \$250,000 that affected schools, colleges, and universities in 2012, with one jury award of \$6.9 million in a molestation case, a \$4.2 million settlement in a bullying case, and two \$4 million jury awards in wrongful death cases stemming from the 2007 Virginia Tech massacre. 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 bullying, discrimination, harassment, negligence, retaliation, sexual abuse and assaults, slips and falls, and wrongful deaths. Many of these claims affected public institutions, but similar incidents could lead to financial losses and reputational damage for independent schools and private colleges and universities.

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 disability, sex, and race discrimination and harassment and retaliation. 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

Accreditation Loss

- The commonwealth of Virginia paid \$2.4 million to settle a lawsuit by 73 former **Virginia Western Community College** students who claimed the college concealed the loss of its national nursing accreditation. The college had been named in the lawsuit, but a judge ruled that the college couldn't be sued. The plaintiffs had sought \$23 million, saying the college had damaged their academic records, making it harder to find jobs or enroll in advanced degree nursing programs.

Bullying

- The **Ramsey (N.J.) Board of Education** will pay \$4.2 million to settle a lawsuit by a former middle school student who was paralyzed when another student punched him in the abdomen. The blow caused a clot in a major artery that supplies blood to the spine. The 12-year-old had complained about his attacker and sought help, but the school failed to comply with a state anti-bullying law, the family's lawsuit said. The school board denied any wrongdoing and defended its harassment, intimidation, and bullying initiatives, saying the district's insurance carriers agreed on the settlement and will pay it out.

- The **Blue Springs School District** in Missouri paid at least \$500,000 to settle a lawsuit in which parents claimed their 12-year-old son hanged himself after being bullied in elementary school. The suit said teachers did not stop the attacks and punished the boy when he defended himself. The district must institute an annual bullying awareness day and some administrators must complete bullying awareness training.
- The **Anoka-Hennepin School District** in Minnesota settled a federal lawsuit that accused school officials of not doing enough to protect gay students, or students perceived to be gay, from bullying. The district will pay a total of \$270,000 to six students who accused the district of creating a hostile, anti-gay environment. The district must better protect students from bullying based on sexual orientation and train staff on dealing with sex-based harassment, according to the agreement in the Department of Justice civil rights case. The school board adopted the settlement 5 to 1. The dissenter resigned in protest.

Discrimination

- The **Camden, N.J., School Board** agreed to pay \$500,000 to settle a lawsuit brought by seven Hispanic students at **Charles Sumner Elementary School** who had to eat lunch on the floor as punishment for spilling a jug of water. The students, who were in fifth grade when the incident occurred, will split \$280,000. The remaining \$220,000 goes toward legal fees. Previously, the board reached a \$75,000 settlement with a teacher who was fired after reporting the incident. The administrator who punished the children was reassigned to another school.
- **Daytona, Fla., State College** settled a lawsuit for \$306,500 with an employee who claimed the college's television station discriminated against and sexually harassed her.

Harassment

- A federal appeals panel upheld a \$1 million Title VI racial harassment award for a student at **Stissing Mountain High School** in Dutchess County, N.Y., agreeing with the jury's assessment that the school district should have done more to stop ongoing demeaning, threatening, and violent conduct toward the student. The award was reduced from the \$1.25 million a jury originally awarded. The appeals court's opinion noted that the "dark-skinned and biracial, half-white, half-Latino" student "had been menaced, threatened, and taunted" at a school where minorities represented less than 5 percent of the student population, and that the **Pine Plains Central School District** knew about the harassment and acted with deliberate indifference by failing to remedy it.
- A former Texarkana, Ark., school teacher settled her racial discrimination and retaliation lawsuit against the school district for \$750,000. She had sued the district after she was fired in April 2009 for allegedly giving **Arkansas High School** students the answers to an end-of-semester test. She said that other teachers with access to the test were not suspected of wrongdoing.

Hiring and Firing

- **Ball State University** in Indiana settled a wrongful termination lawsuit with a former women's tennis coach for \$710,000, including \$550,000 in cash and health benefits for life. The coach was suspended after the university reported NCAA rules violations and an NCAA investigation found six infractions. She was fired and the NCAA placed the tennis program on three years' probation. She filed suit, charging the university with defamation, breach of contract, retaliation for complaining about sex discrimination, denial of due process, and First Amendment and equal protection retaliation.

Sexual Molestation and Assault

- A jury awarded \$6.9 million to a fifth-grader who was molested by a teacher at **Queen Anne Elementary School** of the **Los Angeles Unified School District (LAUSD)**, in which more than 100 molestation and lewd conduct claims are pending. The veteran teacher pleaded no contest to two counts of a lewd act on a child and continuous sexual abuse of a child younger than 14. The civil litigation against LAUSD is based on the school system's responsibility for the teacher's actions.
- The **Englewood, N.J., School Board** and the **Bergen County (N.J.) Vocational and Technical Schools District** will pay \$2.3 million to settle a lawsuit in which three former **Dwight Morrow High School** students claimed that officials were grossly negligent in supervising an administrator who repeatedly molested them. Two of the accusers—brothers—will receive \$700,000 each. The third will receive \$950,000. The Bergen County assistant superintendent, who had been on loan to Englewood, was convicted of criminal sexual contact, endangering the welfare of a child, and two counts of official misconduct. The conviction was overturned on appeal because a courtroom officer had given improper instructions to a juror. The accused was dropped as a defendant in the lawsuit as part of the settlement. The criminal case is ongoing.
- **Allentown School District** in Pennsylvania agreed to pay \$825,000 to settle a claim by four boys who were allegedly molested by an older student and said that educators at **Central Elementary** didn't do enough to stop the assaults. The resolution came a day before the case was to go before a federal jury. In a separate settlement with the U.S. Department of Justice, the district agreed to implement changes to ensure that educators comply with the federal law against sexual discrimination in schools. According to court documents, a 12-year-old boy cornered the victims, who were 6 or 7 years old, and abused them in bathroom stalls. He was placed in a state juvenile facility until age 18.
- The **Susquehanna Township School District** in Pennsylvania settled a student's sexual assault claim for \$600,000, after a federal magistrate said it had acted with "deliberate indifference" to her complaint that a former driver's education teacher forced her to perform a sex act. Also, the district agreed to conduct annual sexual harassment training for all teachers and students. The student claimed that the hostility she encountered forced her to leave school.

- **Charlotte-Mecklenburg Schools** in North Carolina paid a former teacher \$680,000 to settle his lawsuit claiming he was forced to quit after being accused of improperly touching students. A jury had awarded the teacher more than \$1 million, but the district appealed and the case went to mediation. The sixth-grade teacher said he was forced to resign after five students said he touched their thighs. He denied those charges, but acknowledged squeezing shoulders and patting arms and heads.

Slips and Falls

- A Nebraska jury awarded a Union Pacific (UP) railroad worker \$1,032,375 for medical bills, lost wages and earnings, and other damages after a chair collapsed during a safety class at **Mid-Plains Community College** of North Platte. The college agreed to indemnify UP and defend the lawsuit, according to a railroad spokeswoman. In 2006, the college and UP received a \$50,000 federal grant to renovate classrooms and set up safety courses for railcar repair workers, who tend to be large. Office chairs placed in the room were designed for short-term use and had a weight capacity of 300 pounds, although chairs designed for long-term use and 500-pound loads were available at a higher cost, according to the lawsuit.
- **Western Nebraska Community College** in Scottsbluff, Neb., settled a lawsuit for \$915,000 for a 2003 accident that injured a worker who fell 30 feet while removing a scoreboard. A trial court had divided the negligence at about 33 percent among the worker, the college, and a sign company, but the school appealed. The Nebraska Supreme Court released the sign company from liability and returned the case to the lower court. The school's insurance carrier settled the lawsuit to avoid further litigation.

Wrongful Death

- A jury found **Virginia Tech** negligent in a wrongful death lawsuit brought by two families of victims of the 2007 massacre, awarding \$4 million to each. The two students' parents argued that the school was negligent in waiting more than two hours to alert the campus to two fatal shootings in a dorm and a possible gunman at large, leaving students and staff vulnerable. The gunman eventually killed 30 others and himself. The state has asked for a reduction to \$100,000 per family, a limit set by the Virginia Tort Claims Act. The families are seeking to circumvent the cap on claims against the state, according to court filings. Families of most of the other victims have accepted shares of an \$11 million state settlement. The two families had rejected their share of that settlement. Their lawsuit was the last pending litigation over the mass shootings. Meanwhile, an administrative judge overturned a **U.S. Education Department** fine of \$55,000 against Virginia Tech for failing to quickly notify the campus of the shooting threat. The judge's decision said the two-hour period before a warning went out "was not an unreasonable amount of time in which to issue a warning..."

- The parents of a visiting student who died after a fall at the **University of Pennsylvania's** Phi Kappa Sigma (PKS) fraternity house received more than \$3 million in a wrongful death settlement. PKS International Fraternity and the independent housing corporation of the university's PKS chapter paid \$3 million. Suds Beer Store, which allegedly sold alcohol to the underage student, paid \$375,000. The university, which was implicated in the lawsuit, agreed to an undisclosed settlement. The fraternity's national headquarters revoked the chapter's charter and the university removed its recognition as a campus fraternity. The lawsuit alleged that the fraternity ignored instructions to upgrade the railing over which the student fell, landing on his head.
- **Wenatchee High School** in Washington settled a wrongful death lawsuit for \$2 million in the drowning of a freshman boy. In addition, the district must formally apologize to the family and change the way students are protected and evaluated at the pool. A certified lifeguard must be on duty when the pool is in use. The boy was one of 26 students in a physical education class supervised by only one instructor and no lifeguard, and he may have been under water for more than 40 minutes, the police report said. The school fired the teacher.
- The **Williamston School District** in Michigan has agreed to a \$685,000 settlement with the mother of a high school freshman who died last year after a wall collapsed on him. The 14-year-old boy was killed in a boys' locker room when a nearly 7-foot concrete block wall collapsed on him as he lifted himself onto it. A witness said the wall, which didn't reach the ceiling, "had been bad" since 2008 and that students "wobbled the wall as a joke." In 2008, a different wall in the same locker room collapsed "due to horseplay between two students," a school official said.
- The family of a **College of New Jersey** freshman who disappeared from his dorm and was found dead in a Pennsylvania landfill a month later settled a wrongful death lawsuit with the college and the state for \$425,000. The lawsuit alleged that the school was partially responsible for the student's death, citing security weaknesses. Authorities believed the 19-year-old man, who had been drinking, was crushed and killed in the dorm trash compacting system. Investigators found traces of his blood in the trash bin and then searched the landfill. According to the suit, the college didn't properly secure the trash room doors, trash container lids, and the compacting system, and dorm security procedures were lax. Later, the family's attorney said an unstable graduate had sneaked through an unlocked door and murdered the student.
- **Detroit Public Schools** will pay \$425,000 to settle a federal lawsuit filed by the family of a deceased special education student at **Moses Field School**. The girl's mother alleged that her daughter, 9, died of seizures a few days after an aide handled her roughly and forced her to walk unassisted. She was being helped off the bus when a school employee "began repeatedly and forcefully pushing her toward the school building while ordering her to walk straight on her own," the complaint alleged. The girl's head snapped back and forth and she went into a seizure inside the school, but the employee wouldn't help her, according to the suit. The principal was notified but didn't call for medical assistance, write a report, or notify the mother of the girl, the complaint alleged. The school employee, who no longer works for the district, was dismissed as a defendant under the settlement.

- The **University of Idaho** (UI) will make several policy changes and enact new programs as part of a settlement with the family of a slain graduate student, including improved relations and communication with the local police department, better procedures to anonymously report inappropriate activity, and improved sexual harassment training for students, staff, and faculty. The family and UI also reached a reported settlement of \$375,000, which the family plans to donate to charity. The student died after being shot 11 times by an assistant psychology professor with whom she had been romantically involved, according to police. He then killed himself. He had resigned from his position at the university a few days earlier.

Equal Employment Opportunity Commission

Among the developments in employment cases in 2012 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 trends in employment discrimination cases. EEOC settlements that exceeded \$500,000 include:

- **\$11 million** consent decree by **Yellow Transportation Inc.** and **YRC Inc.** in a racial harassment and discrimination lawsuit. EEOC charged that the companies subjected African-American employees at its Chicago Ridge, Ill., facility to a racially hostile working environment and discriminatory terms and conditions, including hangman's nooses and racist graffiti, comments, and cartoons.
- **\$4.85 million** by **Interstate Distributor Co.** in Colorado in a nationwide class disability discrimination lawsuit. The EEOC said the trucking firm unlawfully denied reasonable accommodations to hundreds of employees and fired them pursuant to Interstate's 12-week maximum leave policy. The EEOC also charged that Interstate violated federal law by refusing to make exceptions to its "no restrictions" policy, under which employees with restrictions were not allowed to return to work.
- **\$3.13 million** by **Pepsi Beverages** of Minneapolis to resolve a charge of race discrimination for using a criminal background check policy that discriminated against African Americans.
- **\$1.3 million** by **Hill Country Farms Inc.** of Goldthwaite, Texas, for paying 32 workers with intellectual disabilities severely substandard wages. According to the EEOC, the company exploited a class of disabled workers because their intellectual impairments made them vulnerable and unaware of the extent to which their legal rights were being violated. The court found that, rather than the total of \$65 dollars per month paid to the disabled workers, the employees should have received the average wage of \$11-12 per hour.
- **\$1 million** by **Missoula Mac Inc.** of Madison, Wis., the owner and franchisee of 25 McDonald's restaurants for a sexual harassment class action lawsuit. The EEOC said Missoula Mac permitted male employees to create a hostile work environment against female co-workers, some of whom were teenagers, and to retaliate against those who complained. Several male employees subjected women to sexual comments, kissing, touching of their private areas, and forcing their hands onto the men's private parts, the lawsuit claimed.

- **\$1 million** by certain **IHOP restaurants** in Bernalillo and Sandoval Counties in New Mexico for sex discrimination. According to the EEOC, a manager subjected a class of women, including some teenagers, to sexual harassment, including sexual comments, innuendo, and unwanted touching.
- **\$1 million** by **Whirlpool Corp.** in a racial and sexual harassment judgment for violating Title VII of the Civil Rights Act of 1964 when it did nothing to stop a white male employee at a plant in LaVergne, Tenn., from harassing an African-American female employee. The abuse lasted for two months and escalated when the male physically assaulted the woman and inflicted serious permanent injuries, according to the EEOC.

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