

IN THE OHIO COURT OF CLAIMS
COLUMBUS, OHIO

2012 MAY -7 AM 10:01

JAMES M. FLEMING,)	CASE NO. 2011-09365
)	
PLAINTIFF,)	JUDGE CLARK B. WEAVER, SR.
)	
V.)	PLAINTIFF'S PRETRIAL
)	STATEMENT
KENT STATE UNIVERSITY,)	
)	
DEFENDANT.)	
)	

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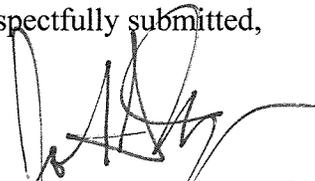
Now comes Plaintiff pursuant to L.C.C.R. 7(B) and hereby submits the following Pretrial Statement.

1. Factual and Legal Issues.
 - a. Whether Kent State University had the right to reassign Mr. Fleming to a position other than the position set forth in the employment contract?
 - b. Whether income Mr. Fleming earns from a subsequent employer under the terms of an employment contract constitutes "collateral recovery" under R.C. §2743.02?
2. Mr. Fleming contends that the damages arising out of the termination of his employment contract are not collateral recovery under R.C. §2743.02. Mr. Fleming has a breach of contract claim, and any damages he incurred arise out of the contract. There is no third party that can be considered to be a collateral source. Any amounts Mr. Fleming earned under a contract subsequent to the termination are to compensate him for work performed in furtherance of that contract and cannot be considered compensation for the harm caused by KSU on account of its breach of the employment contract.
3. Witnesses expected to testify:
 - a. James Fleming

ON COMPUTER

- b. Laing E. Kennedy
 - c. Lester A. Lefton
 - d. Joel Neilsen
 - e. Daryl Hazel
 - f. Plaintiff reserves the right to add additional witnesses as the trial date approaches and will notify the Court and defense counsel.
4. Exhibits to be entered into evidence:
- a. Contract between James Fleming and KSU
 - b. Various contracts produced by Defendant during discovery
 - c. Correspondence related to attempts to reassign Mr. Fleming to a position not set forth in his contract
 - d. Correspondence related to the termination of Plaintiff
 - e. Documents produced by Defendant in response to Plaintiff's discovery requests
 - f. Plaintiff reserves the right to add identify additional exhibits as the trial dates approaches and will notify the Court and defense counsel.

Respectfully submitted,



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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff's Pretrial Statement was served
this 4th day of May, 2012 by regular US mail upon:

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FILED
COURT OF CLAIMS
OF OHIO

Mark H. Reed
Clerk of the Court
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215

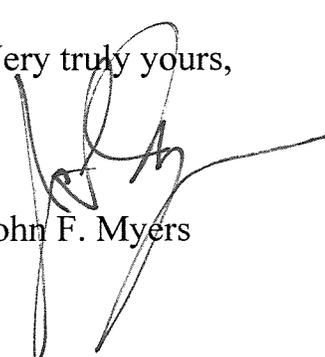
Re: James Fleming v. Kent State University; Case No. 2011-09365

Dear Sir:

Enclosed for filing please find Plaintiff's Pretrial Statement in the above referenced matter.

Thank you for your prompt attention to this matter.

Very truly yours,



John F. Myers

Enclosures

cc: Randall W. Knutti, Esq.
Christopher P. Conomy, Esq.