

# KILLMER, LANE & NEWMAN, LLP ATTORNEYS AT LAW

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1543 CHAMPA ST. • SUITE 400 • THE ODD FELLOWS HALL • DENVER, CO 80202  
303.571.1000 • FAX: 303.571.1001 • www.killmerlane.com

Darold W. Killmer  
David A. Lane\*†  
Mari Newman\*  
Sara J. Rich  
Qusair Mohamedbhai‡  
Althea Licht\*  
Rebecca T. Wallace

June 5, 2009

## VIA EMAIL ONLY

Patrick T. O'Rourke, Esq.  
Special Assistant Attorney General  
Office of University Counsel  
1800 Grant Street, Suite 700  
Denver, Colorado 80203  
Patrick.orourke@cu.edu

Re: *Ward Churchill v. University of Colorado et al.* - 06 CV 11473

Dear Patrick,

On June 4, 2009, you filed the Defendants' Reply Brief in Support of their Motion for Judgment as a Matter of Law. Page 7 of this Reply contained the following language:

The University agrees and stipulates that it shall waive its immunity to claims for damages under the Eleventh Amendment to the United States Constitution to permit the same recovery from the University that might otherwise be had against any of its officials or employees acting in their official or individual capacities, reserving to the University the ability to present the same defenses that would have been applicable to any of its officials or employees acting in their official or individual capacities.

As you know, this language is not found in the stipulation filed with the Court. You then go on to advise the Court that there is another stipulation, not filed with the Court, in which the parties apparently stated that “[i]n return for the ability to bring direct claims, Professor Churchill agreed that the University acquired the ability to assert any defenses that would be available to individual Regents.” However, in the Reply brief, you failed to attach this other stipulation.

\*Also admitted to practice in California

†Also admitted to practice in New York

‡Also admitted to practice in Wyoming

My understanding of our agreement was that in order to put the Regents' minds at ease about their personal liability, I would dismiss any individual capacity claims against them and proceed only on official capacity claims against the governmental entity (CU and the Regents) as they were waiving 11<sup>th</sup> Amendment immunity. I never envisioned giving an entity like CU or the Regents all the rights of any immunities the Regents may have had in their individual capacities. The whole purpose of this exercise was to essentially do the Regents a favor by taking them out of the line of fire personally – not to give additional immunity and legal rights to CU. The entities can exercise any and all rights available to them as entities, not as if they were individuals. In exchange for Churchill dismissing the Regents in their individual capacities (and certain other claims), CU waived 11<sup>th</sup> amendment immunity. That was the full extent of the agreement, which is entirely contained in the joint stipulation filed with the Court.

I request that you advise the Court that there is a disagreement regarding any other stipulation regarding whether it exists and what it accomplished if it did. Professor Churchill never conferred upon the University of Colorado and the Board of Regents the ability to raise quasi-judicial immunity defenses, legally only available to the Regents in their individual capacities. There is no other stipulation, but only the stipulation filed with the Court, and this purported clause you reference in your Reply brief was, to my honest recollection, never discussed nor contemplated even in the negotiations leading up to the final stipulation.

As such, I am asking you to please immediately amend your Reply brief to remove any reference to this "other stipulation."

Sincerely,

KILLMER, LANE & NEWMAN, LLP

A handwritten signature in black ink, appearing to read "David A. Lane". The signature is fluid and cursive, with a prominent initial "D".

David A. Lane