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# DAILY REPORT

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## Jury Awards \$400K to Fired Clark Atlanta University Professor

**GREG LAND**

A FULTON COUNTY JURY AWARDED \$300,000 in damages and \$105,000 in attorney fees to a tenured Clark Atlanta University professor who was one of 54 faculty members let go in 2009 during what the college termed an “enrollment emergency” of plummeting student admissions.

The defense turned down an offer to settle the case for \$150,000 early in the litigation, said Patrick McKee of Newnan’s McKee & Mitchell, who represents the plaintiff.

Biology Professor Deborah Cook had been with CAU since it was formed through the 1988 merger of Clark College and Atlanta University and was one of the original members of its Department of Biological Sciences, said McKee.

“She had been awarded significant grants, won numerous accolades and been promoted throughout her career,” said McKee. According to court filings, Cook’s annual evaluations indicated that she consistently met or exceeded expectations; her final evaluation, in 2007, ranked at 5, the highest possible score.

Since being dismissed from the university, McKee said Cook has been



**Patrick W. McKee**

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working as a consultant—“you might say self-employed”—and has failed to find another position as an educator.

“Academic, tenure-track professor positions are few and far between these days,” McKee said.

CAU’s attorney, Duluth solo Gary Thomas, declined to comment on the case or whether an appeal would be filed. But, said Thomas via email, “the litigation on this case will continue.”

Cook’s career began to unwind in 2008 when CAU’s new president, Carlton Brown, declared an enrollment emergency. That is defined in the faculty handbook as a “sudden or unexplained progressive decline in student enrollment the detrimental effects of which are too great or too rapid to be offset by normal procedures outlined in the handbook.”

Under normal circumstances, the school was allowed to save money by reducing

salaries and hours and offering early retirements, Cook's complaint said. The school could also implement involuntary layoffs based on faculty status, tenure and seniority, the complaint added.

But by declaring an enrollment emergency, CAU could lay off faculty, including tenured and tenure-track professors, without going through the normal procedures and without providing severance pay.

Brown explained his decision by saying enrollment had been falling yearly, and estimated that 2009's enrollment would be 3,400 students, down from 4,068 in 2008, according to the defense portion of the pretrial order.

"The enrollment shortfall resulted in a drop in anticipated tuition revenues of \$4 million and a corresponding decrease in available operating revenue for 2008-2009," said the defense account. The news got worse, it said, when the university controller apprised Brown that "CAU's cash position had been misrepresented by approximately \$2 million in unaccounted for liabilities."

When other cost-cutting measures failed to meet the shortfall, Brown declared the enrollment emergency, "based on an unplanned progressive decline in enrollment over many years that became institutionally life-threatening in 2008."

In response, CAU cut 54 faculty members and around 30 staff members, the defense portion of the order said. According to Cook's complaint, there were 229 faculty members in 2008.

The complaint said that, contrary to Brown's projection, the actual number of enrollees in 2009 reached 3,700. That is 300 more than Brown's prediction of 3,400 students, but still a 9 percent decrease from the year before.

"The fact of the matter was that Clark Atlanta University's enrollment had always been unstable and been in decline for a decade, in part because of the closure of significant schools and programs," said

McKee. As noted in the pretrial order, the university had shuttered its schools of International Affairs and Library Science, and the Engineering and Allied Health departments in the years prior to the layoffs.

Faculty levels were not necessarily linked to enrollment, said McKee, with the number of professors sometimes increasing even as student rosters dipped.

In 2013, McKee filed a breach of contract suit against CAU in Fulton County Superior Court, arguing that the university had not met the requirements for declaring an enrollment emergency laid out in the handbook, nor had it followed the procedures for laying off faculty members once an emergency had been declared.

According to the defense filing, a key argument against Cook's suit was that the faculty handbook was not a portion of her contract, and included a statement that it "shall not be construed as a legally binding contract."

Judge Kimberly Esmond Adams turned aside that argument when the defense raised it in motions to dismiss and for summary judgment, McKee said.

"The judge correctly ruled that a faculty handbook, if it's expressly referenced or is something the faculty relies on, becomes part of the contract," said McKee.

During a four-day trial, McKee said the key to his case was proving that CAU had not experienced enrollment emergency. His main witness was Georgia Tech Mathematics Department Chairman Douglas Ulmer, who analyzed CAU's historical enrollment numbers and testified that the decline had been gradual, not sudden, and was not necessarily accompanied by a commensurate decline in faculty.

McKee calculated the value of Cook's lost salary and benefits, less what she had earned through other employment after being laid off, at almost \$866,000.

The defense did not put up any statistical experts he said, but did provide a damages

evaluation expert who, McKee said, ended up helping Cook's case.

"He said her damages were, at the most, \$250,000," he said. "So I argued to the jury that their own expert said her damages should be at least \$250,000."

On Jan. 30, after about two hours of deliberations, the jury awarded Cook \$300,000 on damages. The panel also awarded \$105,000 in attorney fees, finding that the university "acted in bad faith, has been stubbornly litigious, or caused [Cook] unnecessary trouble and expense."

McKee said he expected the defense to appeal, "just based on the fact that they have fought these cases as hard as they could."

In August 2013, a Fulton County jury awarded each of five other CAU professors a year's worth of back pay plus interest along with \$290,000 in attorney fees in another suit stemming from the 2009 firings.

The lead plaintiffs' attorney in that case, Billips & Benjamin partner Mitchell Benjamin, said that judgment in that case has only recently been entered, and that CAU has filed a new motion for judgment notwithstanding the verdict.

Benjamin said that, once that issue is resolved, he expects to appeal the trial court's ruling limiting his client's recovery to only one year of salary.

"Interestingly," said Benjamin, "As a tenured professor, Professor Cook was able to recover her lost wages and benefits for several years after the layoffs, while we were limited to recovering only one year of damages. We believe the tenured professors in our case were entitled to those years of back pay too."

According to the CAU website, the university enrolled 3,407 students for the 2014-2015 year, and has 173 full-time faculty members.