

## **Saiber Wins Appeal for Higher Education Client in Hostile Educational Environment Suit**

September 11, 2023

Saiber attorney Sean Kelly won an appeal on behalf of a major state university and one of its senior faculty in connection with a claim by a former graduate student that defendants violated the New Jersey Law Against Discrimination (NJLAD) by creating a hostile educational environment.

In a lawsuit filed in Superior Court, the former student, a black male of African descent, alleged that a professor of international law repeatedly intimidated and harassed plaintiff because of his race and mental illness, and that the university failed to take appropriate protective and corrective measures, all in violation of the NJLAD. The trial judge entered summary judgment dismissing all claims against both the university and the professor in 2021. Specifically, the trial court noted that the university had appropriate policies in place to protect students from unlawful harassment, but that the plaintiff failed to avail himself of those policies. As for the professor, the trial court held that the NJLAD imposes liability against an individual only where that individual has “aided or abetted” the wrongful conduct of the university, and that where the university has no liability, it follows that the individual defendant also has no liability.

On the plaintiff’s appeal, the New Jersey Appellate Division affirmed on grounds beyond those addressed by the trial court. The appellate court held that the plaintiff had failed to produce adequate evidence that he had in fact been a victim of race-based or disability-based discrimination, and so the defendants were entitled to summary judgment without regard to the university’s anti-discrimination policies and procedures.

Therefore, in its August 30, 2023 opinion and order, the appellate panel affirmed the lower court’s orders granting summary judgment for both the university and the professor.