

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Shannon Miller, Jen Banford,  
and Annette Wiles,

Plaintiffs,

v.

The Board of Regents of the  
University of Minnesota,

Defendant.

Case No. 15-cv-03740 (RHK/LIB)

**DEFENDANT’S STATEMENT OF  
THE CASE**

Defendant The Board of Regents of the University of Minnesota (“the University”) hereby submits its Statement of the Case, as called for by the Court’s December 18, 2015 Amended Pretrial Conference Notice and Order.

The University denies that it discriminated against Plaintiffs on the basis of their gender, sexual orientation, national origin, or age; denies that it retaliated against Plaintiffs or took adverse employment actions against them in response to complaints about discrimination or other violations of the law; and denies that it violated the Equal Pay for Equal Work Law or the Equal Pay Act. The University responds more fully to the allegations of each Plaintiff below.

**Plaintiff Shannon Miller**

Shannon Miller’s gender, sexual orientation, age, and national origin (Canadian) played no role whatsoever in the University’s decision not to renew her contract as head women’s hockey coach at the University of Minnesota, Duluth (“UMD”). Miller was the

highest-paid women's NCAA college-hockey coach in the nation. And, while Miller had been the highest-paid coach in Division I NCAA Women's Hockey for the previous four years, she had not qualified for the NCAA Tournament since the 2010–11 season (when her team was eliminated in the first round). Indeed, the worst four years of Miller's career were the four seasons prior to the non-renewal of her contract. Contrary to her allegations, Miller's need to improve the hockey program's performance in competition, in the classroom, and in the community were made clear to her.

The non-renewal of the contracts of Miller's staff members is not evidence of gender or sexual-orientation discrimination; rather, it is consistent with common university practice when a head coach is replaced. That is, the University provided non-renewal notices to Miller's staff so that the new coach could select his or her own coaching and operations staff (including one or more of the non-renewed staff, if the new coach so chose). In fact, one of the non-renewed staff members was a finalist for the head-coach position in the subsequent search for a new head coach.

The University's failure to terminate the higher-paid men's hockey coach,<sup>1</sup> Scott Sandelin, also does not evidence discrimination, as Miller alleges. As an initial matter, Sandelin's contract does not expire until 2017, and so it was not under consideration for renewal at the same time as Miller's. Moreover, in contrast to Miller's 0-1 NCAA tournament record in the prior five years, Sandelin's record was 6-2, with three NCAA tournament appearances.

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<sup>1</sup> Sandelin's base salary was \$265,000 versus Miller's \$207,850; it was not in excess of \$300,000 as alleged. The pay differential is amply justified by the market and the difference in job duties and responsibilities.

Nor does the University's decision to extend the contract of the men's football coach, Curt Wiese, support Miller's allegation of discrimination. Wiese's pay of \$85,000 was approximately 40% of Miller's, and—unlike Miller—he was *not* the highest paid coach in his sport's level of intercollegiate athletics (i.e., NCAA Division II football). He was not even the highest-paid football coach in UMD's conference (the Northern Sun Intercollegiate Conference (NSIC)). Rather, Wiese's pay ranked 8<sup>th</sup> out of 16 in the conference. Yet, since Wiese's arrival<sup>2</sup> at UMD in February 2008, the football team has gone 86-10 (for an .895 winning percentage—a figure unmatched by any Division II football program), and the team captured two NCAA Division II national championships (2008 and 2010) along with six NSIC titles (2008–12 and 2014) while producing two perfect 15-0 seasons. Wiese was awarded the 2013 NCAA Division II Football National Head Coach of the Year honor.

Much of the other evidence cited by Miller is simply false. By way of example only, summer scholarships have in fact been awarded to women's hockey players. Indeed, the total women's hockey scholarship funding has historically exceeded that of the men's hockey team. For instance, in 2014–15, total scholarships of \$460,785 were awarded for women's hockey, versus \$408,754 for men's hockey, even though the men's team had more players.

Moreover, Miller's discrimination claim is belied by the fact that the new head women's hockey coach is a woman who identifies as gay.

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<sup>2</sup> Wiese was hired as Offensive Coordinator and then promoted to head coach in 2012.

Finally, the University denies that Miller suffered from a hostile work environment based on her gender, sexual orientation, age, or Canadian origin. To the extent Miller brought complaints to the attention of the University, each complaint was investigated, and appropriate action was taken in response.

### **Plaintiff Jen Banford**

The University offered and always intended to offer Jen Banford a contract extension to remain in her position as head softball coach. Far from being hostile toward Banford, Athletics Department leadership assured her (and her team) multiple times, both orally and in writing, that her position as head softball coach was secure.

Banford held a hybrid position as the Director of Hockey Operations/Head Softball Coach. On December 11, 2014, Assistant Athletic Director Jay Finnerty emailed to Banford a non-renewal letter from Athletic Director Josh Berlo notifying her that her appointment as “the Director of Hockey Operations/Head Softball Coach” would end on June 14, 2015, and would not be renewed. The cover email to Banford clearly and explicitly stated that she would continue as Head Softball Coach: “*We are in the process of working with Human Resources to reclassify your job as solely Head Softball Coach.*” As set forth above, Banford’s non-renewal for the hockey staff position—along with the other hockey staff members—was consistent with common practice when a head coach is replaced to enable the new coach to select his or her own coaching and operations staff. Banford’s suggestion that two American (as opposed to Canadian) full-time hockey staff members hired by Miller did not receive notices is simply wrong. The individuals to

whom Banford points were Sports Medicine and Performance Department staff, and were not hired by Miller, but rather by Assistant Athletic Director Dr. Michael Wendinger.

A few days after Finnerty emailed Banford the non-renewal letter regarding the hybrid position, on or about December 16, 2014, Associate Athletic Director and Senior Woman Administrator Karen Stromme met with the softball team and told them that Banford would be their softball coach for the coming season. Finnerty then spoke to Banford on or about December 17, 2014, and told her that it would be an approximately 60-day process to provide her the new appointment as head softball coach. Berlo also spoke with Banford on or about December 18, 2014, and communicated that the University fully intended to retain her and that they were working through the details.

About one month later, on January 15, 2015, Banford inquired of Finnerty by email as to the status of the new appointment. Finnerty advised her in person that same day that the appointment was still in process. Also that same day, Finnerty facilitated the electronic scheduling of a January 20, 2015 meeting with Berlo and Banford to explain where they were in the process. Banford accepted the meeting appointment. Two days later, on January 17, 2015, Banford electronically declined the previously-accepted January 20th meeting and apparently reported to the media that her contract as head softball coach had been non-renewed. Banford supplied the media only with the letter of non-renewal of the hybrid Head Softball Coach/Director of Women's Hockey position and neglected to supply the media with Finnerty's cover email. Thus, on Sunday, January 18, 2015, ESPNw reported that Banford said that she received notice that her Head Softball Coach position would not be renewed. The online version of the story

provided a link to the non-renewal letter, but not the cover email, which Banford chose to hide from the press.

The University was shocked that Banford would provide this erroneous information to media, given the multiple assurances to Banford that she would continue as head softball coach. Finnerty therefore reached out to Banford on the day the ESPNw story was published, and once again assured her that she was to be the head softball coach. On Monday, January 19, 2015, Berlo communicated similar written assurances to Banford.

Consistent with the University's intentions and its representations to Banford all along, the University formally offered Banford the head-softball-coach position on January 27, 2015. Banford declined the offer on February 9, 2015.

The University denies that Banford suffered from a hostile or discriminatory work environment. It did not, for instance, "hold hostage" Banford's equipment as she alleges. Any delays in the release of equipment deliveries were due to lack of required paperwork and the need to resolve budgetary issues, which the University promptly sought to work through and resolve. Each of the teams that shared the Malosky Stadium field—football, women's and men's track and field, and women's soccer—made accommodations for other teams. In fact, the University had facilitated for the softball team the greatest number of on-campus home games in five years. And, far from discriminating against Banford on the basis of her national origin, in early 2014, Athletic Director Berlo was successful in convincing an acquaintance—the head coach of a Division I women's

program—to write a letter to federal authorities in support of Banford’s application for U.S. citizenship.

Contrary to Banford’s allegations of gender and age discrimination, after Banford declined UMD’s contract offer as head softball coach, UMD hired an older woman for that position.

### **Plaintiff Annette Wiles**

As with Banford, the University intended to maintain Annette Wiles’s employment. Wiles resigned before the University had an opportunity to present her with a contract for the 2015–16 season. The University denies that Wiles was forced to resign due to discrimination or a hostile work environment on the basis of her gender, sexual orientation, or age. In fact, in a conversation she initiated with two coaches in the spring of 2015, Wiles admitted that she did not suffer any discriminatory animus. Wiles had walked into a coach’s office where two coaches were talking, and expressed her disbelief about Miller’s and Banford’s allegations against the University. Wiles noted that she (Wiles) had been an openly gay UMD Athletic Department employee for years, and had never experienced discrimination, stating that it was a great place to work.

Wiles’s specific allegation that Berlo’s and Strong’s attitudes towards her changed after the October 2013 GLBT National Coming Out Day luncheon is baseless. As an initial matter, Wiles was openly gay prior to the Coming Out Day luncheon. Most, if not all, of the Athletic Department leadership had met Wiles’s partner (a woman) and their daughter. Berlo, for instance, had met Wiles’s partner (now spouse) in the fall of 2013 before the luncheon, and Strong regularly socialized with Wiles and her partner.

In fact, Strong and Wiles were good friends for years. Strong went to bonfires and barbeques at Wiles's house, and they played on a bocce ball league team together. Strong babysat Wiles's daughter. Strong attended the GLBT National Coming Out Day luncheon in October 2013. She went to Wiles's daughter's birthday party the following month, in November 2013. She also traveled with the women's basketball team to Missouri after the Coming Out Day luncheon. Wiles's graduate assistant—who identified as gay—lived in Strong's home, as did other gay female coaching staff.

Unfortunately, Wiles severed her friendship with Strong as a result of a falling-out in October 2014. Namely, Wiles had incurred charges of over \$1,200 for wear and tear on the leased Toyota vehicle that the University provided to her free of charge. Despite the fact that Wiles had signed a lease contract agreeing that she would be personally responsible to pay Toyota for charges such as wear and tear and mileage overages, Wiles declined to pay the charges she had incurred. Instead, she insisted that Strong find money in the department's budget to pay for the charges. Strong had difficulty finding money in the budget and Wiles became hostile toward Strong—not the other way around.

Berlo, likewise, harbored no hostility toward Wiles or the GLBT community generally and, in fact, supported Wiles and the GLBT community. Berlo was among a small contingent of family and friends who attended the August 2012 wedding ceremony of a close friend who is gay and travelled over 750 miles to do so. Berlo found it both courageous and inspiring that Wiles spoke at the Coming Out Day luncheon.

The allegations underpinning Wiles's hostile-work-environment and discrimination allegations are simply unsupportable. By way of example,

- The alleged “invalid survey” provided to Wiles’s players was provided to *all* UMD student athletes. The survey link was emailed to Wiles along with all of the other coaches, and she had unfettered access to it; that no one gave her a “hard copy” is immaterial. It is true that Wiles was not given a copy of the survey results, but she was not treated differently. To protect student identities and encourage accurate student feedback, no coach was given a copy of the results.
- Contrary to Wiles’s allegation that the 2014 and 2015 senior players’ exit interviews were performed by Berlo and Stromme rather than Strong, those exit interviews were, in fact, performed by Strong alone.
- Coaches throughout the Athletic Department were treated similarly with respect to leased vehicles: each coach who received a leased vehicle rather than a monthly stipend signed a lease with Toyota obliging the coach to pay wear-and-tear charges, mileage overage charges, and the like.
- The women’s basketball budget was not “slashed.” That budget was \$408,704 in fiscal year 2013, was increased by more than \$50,000 to \$461,580 in fiscal year 2014, and was reduced by just a small fraction of a percent (\$2,404) in fiscal year 2015 to \$459,176.
- While it is true that Berlo did sometimes reschedule meetings with Wiles (and many others), this was a function of his rigorous and often unpredictable schedule, not a sign of disrespect toward Wiles. Berlo did not exclude Wiles from any meetings.

Finally, contrary to her allegation of gender discrimination, after Wiles quit her job, UMD hired a woman for the position of head coach for the women's basketball team.

In short, Wiles's allegations regarding discrimination are without merit.

**Alleged Equal Pay for Equal Work Law or the Equal Pay Act Violations**

Plaintiffs' allegation that they received unequal pay for equal work is meritless. Compensation for each employee depends on job performance, duties and responsibilities, and market conditions. An employee's gender and sexual orientation were not considered in determining compensation.

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**GREENE ESPEL PLLP**

s/ Jeanette M. Bazis

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