
PURE PAST MEDIATION

Information for the Mediator

You have been selected by counsel to mediate a federal district court case involving claims of age and disability discrimination and retaliation for the exercise of FMLA rights. You have learned the following information about the case.

BioPharm is a large multi-national pharmaceutical company. Two years ago, BioPharm purchased ImmunoGro, Inc., the developer of ImmunoPure, an extremely pure intravenously administered immuno-globulin, used to boost immune responses in immune deficient patients. Other immuno-globulin products were either expensive and pure, or inexpensive but less pure, causing difficult side effects for some. ImmunoPure was valuable for its marriage of high purity and low cost.

ImmunoGro was started by two immunologists, Drs. Jenkins and Karp, and Jenkins' university lab manager, Chris Tillem. Jenkins and Karp put up capital and took debt risk; only they became owners. Tillem set up ImmunoGro's first lab. After the BioPharm purchase, Tillem became a BioPharm lab manager, responsible for ImmunoPure. Karp and Jenkins continued as directors of BioPharm's ImmunoPure work.

Eighteen months ago, Tillem suffered serious health problems, including double vision, severe headaches, and tremors and spasticity in his limbs. His family physician said it may be multiple sclerosis or another neurological illness. Anticipating illness episodes and many tests before a definitive diagnosis, Tillem informed his supervisor, Elliot Lassiter, BioPharm's VP of Lab Operations, and requested FMLA leave. Lassiter sent Tillem to HR, where Tillem asked about the FMLA and obtained FMLA paperwork. The HR Director (and Lassiter) said BioPharm would work with Tillem to accommodate occasional flare ups and tests and suggested saving FMLA for future lengthier absences.

Six months later (a year ago), BioPharm scientists had fully developed an ImmunoPure patch delivery system. The ImmunoPure patch would be less expensive, easier, and safer for most patients, except a small percentage requiring immediate, extremely concentrated doses. BioPharm asserts that it then moved ImmunoPure responsibility to its patch division to save costs. Tillem and six other BioPharm employees were terminated.

Tillem sued BioPharm, claiming age and disability discrimination and retaliation for exercising FMLA rights. Tillem notes that many of those terminated were over 40, and some employees hired into the patch division since then are younger. Though the formal diagnosis of MS wasn't made until some months after termination, Tillem clearly showed signs of a severe illness. Tillem claims the BioPharm supervisor expressed discomfort with Tillem's symptoms and shut him out of important meetings before termination.

Suit was filed in federal district court. Discovery is largely complete. BioPharm anticipates moving for summary judgment but has not yet filed. Nine months after termination (three months ago), Tillem was hired as a lab technician at the state forensics laboratory, earning \$24,000 a year less than at BioPharm. Tillem's attorney has emphasized that emotional distress is an enormous factor in this case, far more than in most termination cases. Both attorneys recommended and the clients agreed to try to settle the case in mediation.