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# PHARMA FEUDS

## NEGOTIATION

### General Information

Blue-Pharm was formed as a joint venture between the Blue State University Bio-Medical Department and Pharmalux, a small pharmaceutical company. The Blue State government provided some start up assistance for Pharmalux several years ago and helped create the Blue-Pharm joint venture. Blue-Pharm's mission is to undertake complex research and development for the next generation of drugs and drug delivery systems. Blue State University's bio-medical graduate students and professors are involved in research design, and Blue-Pharm owns the intellectual property created.

Proceeds from the sale or licensing of the intellectual property are distributed back to Blue University and Pharmalux, after funds needed for ongoing or planned research projects are set aside. Drug and drug delivery systems developed and designed are produced and marketed by Pharmalux. The licensing fees are kept reasonably low in consideration for technical assistance and cooperation provided by Pharmalux to the Blue-Pharm joint venture. If and when Pharmalux decides to discontinue production of a Blue-Pharm patented technology, the rights to license or sell the technology revert back to Blue-Pharm. Blue-Pharm would presumably try to license or sell the technology to an outside company.

Within the last five years, Blue-Pharm patented two similar products, Immuno-Plus and Immuno-Pure, and licensed them to Pharmalux. Both drugs are designed to boost the immune system in immune deficient patients. Immuno-Pure uses an extremely pure and costly manufacturing process and is necessarily priced high. Shortly after Immuno-Pure was in production at Pharmalux, Blue-Pharm developed Immuno-Plus, which uses a far less expensive manufacturing process. Pharmalux eagerly began producing and marketing Immuno-Plus, for it could be priced lower and still yield much higher profit margins.

Most of the patient population tolerate both drugs well. However, a minority of patients develop debilitating headaches and nausea from the less expensive Immuno-Plus. Most insurers will only pay for Immuno-Plus, absent physician verification of a patient's serious adverse reaction to it. Both drugs currently require intravenous delivery to patients.

Some time ago, Pharmalux decided to discontinue manufacture of Immuno-Pure, and to expand production of the lower cost, more profitable Immuno-Plus. The Pharmalux marketing team announced that production of Immuno-Pure would cease within the next few months, so that customers could stock up.

Fortunately for these patients, a small group of Pharmalux scientists announced that they would like to launch their own company, Pure Health, committed to producing Immuno-Pure. Pharmalux released these scientist employees from their non-compete obligations if they went forward with the Pure Health venture.

Representatives of Blue-Pharm and Pure Health negotiated an agreement permitting Pure Health to produce Immuno-Pure, and. Their deal was structured as long-term, renewable license for Pure Health to use Immuno-Plus manufacturing and product patents for the sum of \$1 million per year. However, Blue-Pharm insisted, and the final contract stated that

“pharmaceutical process or product improvements would revert to Blue-Pharm for use in other pharmaceutical products.”

Within three years, Pure Health had improved the manufacturing process for Immuno-Pure, making it nearly as inexpensive to produce as Immuno-Plus, while maintaining product purity. Pure Health dutifully provided access to these manufacturing improvements to Blue Pharm, for use in “other pharmaceutical products.” Imagine Pure Health’s anger and dismay when it learned that Blue Pharm was giving these improvements to Pharmalux, for use in manufacturing Immuno-Plus! Improvements in the manufacturing process, permitting greater purity, render end-product differences between Immuno-Plus and Immuno-Pure insignificant. Pure Health takes the position that “*other products*” meant *other than* the Immuno-Plus/Immuno-Pure product “cluster.” Pure Health maintains that was *clearly* the intended meaning of the deal, and that the Blue-Pharm principals knew that.

Within that time, Pure Health had also developed a manufacturing process for anti-microbial coatings on medical devices, which derived from and (differently) improved upon the original Immuno-Plus patents. Blue Pharm demanded access to these improvements. Pure Health refused, taking the position that they were not being used for pharmaceuticals, but rather, for coating medical devices.

Pure Health and Blue Pharm have retained counsel, who have exchanged correspondence threatening suit. Through counsel, Pure Health argues that Blue Pharm’s permitting Pharmalux to use the Pure Health process improvements for Immuno-Plus violates the clear intent of the contract. Blue Pharm maintains that Pure Health’s withholding of its derivative improvements in anti-microbial applications also breaches their contract’s language and intended meaning.

Both parties are ANGRY! However, counsel have advised them that litigation is time consuming and expensive, and outcomes are uncertain. They suggested that the parties attempt to resolve their dispute prior to filing any lawsuits.