
PURE PAST NEGOTIATION

Confidential Information for Plaintiff's Attorney

You are the attorney for the plaintiff, Chris Tillem. A summary of what you have learned about Chris's perspective on the case is set forth below.

Chris is far, far more than angry at BioPharm and at Dr. Jenkins and Dr. Karp. They betrayed Chris! These people KNEW that Chris was going through a living hell with MS. HOW COULD THEY PERMIT HIS TERMINATION?! Chris was (and is) facing a degenerative illness, hopefully long-term, but still degenerative. Chris has no idea how long he will be able to work. Chris took great pride in his work at BioPharm and ImmunoGro, and in the decade of experimental work at the University to develop ImmunoPure. The idea of NOT working panics and depresses Chris, who is single – long ago divorced – without anyone to provide financial support.

When Chris was terminated, the emotional horror and fear of the illness and diagnosis were *exponentially intensified* by the fear of not being hired anywhere before MS left him completely unable to work. Chris was emotionally distraught at having been set up and betrayed by Lassiter and the HR people, who refused to let him take FMLA leave, and then plotted to cut Chris out of BioPharm because of his medical condition.

Even more hurtful was Karp's and Jenkins' betrayal: they let BioPharm do this to Chris. They could have intervened – BioPharm still needs them – but didn't bother. Some reward after decades of steadfast loyalty! The ImmunoGro venture to develop ImmunoPure commercially was launched at Chris' kitchen table. Chris left a secure position of 20+ years at the University to help start ImmunoPure. It was understood that Chris would be rewarded with bonuses and profits if and when ImmunoGro became highly profitable. Many of Chris' laboratory innovations lead to the patented production techniques that made ImmunoPure so pure and less expensive to produce.

Unfortunately, Chris hadn't anticipated that ImmunoGro would be purchased just as it was becoming profitable. At the time, Karp and Jenkins paid Chris a bonus that was significant dollars, but stingy in his view, considering what he had done for them. They also promised the new BioPharm job would enhance Chris's responsibility and salary. That was somewhat true, but it didn't provide protection from termination.

You told Chris there is an excellent chance of succeeding at trial if the case gets past summary judgment. It helps that 5 of the 7 people terminated were over 45 and three of those were over 50. You and Chris both suspect that was because the HR representative who selected people for layoffs was only 35. Chris has warned you that BioPharm will claim they needed people with more experience in patch technology. Chris could easily have learned whatever was needed! BioPharm has since hired two people into its patch division, one 28 and one 36.



Chris is convinced the whole “transfer” of ImmunoPure to the patch division was a ruse. The lab setup is similar, with some add-on equipment for testing patches. BioPharm’s greedy management changed the lab “reporting lines” just to get rid of Chris and the inevitable cost of his anticipated absences. Chris understands that under the FMLA, an employer is required to hold his job. (You haven’t researched it, but you doubt it would protect against a real, mass layoff.) Chris believes that is why BioPharm’s managers advised against his taking FMLA leave yet. They were planning to get rid of him.

Chris has told you of his sense at the time that BioPharm’s Lassiter and even the HR manager were uncomfortable with his illness. When they saw Chris’ hands trembling or his fingers splaying (as does happen), they looked away and pretended to check the clock. A BioPharm co-worker told Chris that Lassiter had asked whether he noticed how “spastic Tillem is” and asked if Chris’ speech was ever slurred, because “people with neurological issues can be hard to understand.” Lassiter deliberately called at least two ImmunoPure meetings late in the day, after Chris had left. Chris did tend to get tired and leave early, to rest and finish paperwork at home. If Chris had known of the planned meetings, he would have stayed.

During the nine months that Chris was unemployed, the bank nearly foreclosed on his home. Ironically, a month before the termination, Chris had sold the small house he owned outright and purchased a house on the more expensive side of town to be closer to BioPharm. When Chris got his new job, he could pay the mortgage again and the bank was willing to work with him on penalties and fees. Fortunately, the house is a ranch, easily adaptable to accommodate the illness. Unfortunately, Chris has no money to hire a contractor to make the bathrooms and the front and side brick steps more accessible.

Chris’ new salary of \$40,000 is \$24,000 lower than the BioPharm salary of \$64,000. The new job is less interesting. However, Chris has told you his colleagues are decent people and the benefits are comparable, including a long-term disability benefit at 40% of salary.

You have recommended that Chris try to negotiate a settlement. He agreed it would be a good idea, if possible. However, you can tell that he remains VERY angry with BioPharm and Drs. Karp and Jenkins. You suspect this anger may make settlement difficult.

Shortly after suit was filed, a conferencing magistrate asked if any settlement demands or offers had been made. As the answer was no, he suggested that you make a formal demand and then try to negotiate. After extensive discussion with your client, who wanted to demand \$1million, you obtained his agreement to make a demand of \$600,000. You have never received an offer from the defendant.