

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BECKY MCCLAIN : CIVIL ACTION NO. 3:06-CV-01795-SRU
 :
 Plaintiff, :
 V. :
 :
 PFIZER, INC. : FEBRUARY 16, 2007
 :
 Defendants, :
 :
 : JURY TRIAL DEMANDED

AMENDED COMPLAINT

FIRST COUNT: (BREACH OF ORAL CONTRACT AS TO DEFENDANT
PFIZER INC; COMMON LAW WRONGFUL TERMINATION)

1. At all times herein complained of, the plaintiff, Becky McClain ("McClain") was a resident of Deep River, Connecticut.

2. At all times herein complained of, the defendant Pfizer, Inc. ("Pfizer") was a specially chartered corporation organized and existing under the laws of State of New York and operated a pharmaceutical and research institution in Groton, Connecticut.

3. This action was originally brought in Connecticut state court, Judicial District of New London, and was removed pursuant to 28USC §1441 and 1446 and 28 USC § 132.

4. At all pertinent times herein complained of, during the time period of August 1995 through May 26, 2005, according to the letter sent to the plaintiff on

that date from Human Resources, plaintiff Becky McClain was employed by the defendant, Pfizer, as a research scientist at Pfizer, Inc.

5. Specifically, in August 1995 the plaintiff was hired in Lincoln, Nebraska and then transferred to Groton, CT. From approximately 1995 through 2000, she was employed in the Animal Health Group's Vaccine Department. In the year 2000, she moved into a position in Pfizer's Human Health Embryonic Stem Cells Technologies, Genomic and Proteomic Sciences and Exploratory Medicinal Sciences Group. The terms of her employment were memorialized in, among other things, an employment agreement which was signed in April of 1996, the employee handbooks and memos she was provided, and she was also given oral assurances of job security that she would not be terminated without good cause.

6. Her duties included research and scientific studies in molecular biology as it pertained to the development of vaccines, as well as the development of embryonic stem cell technologies for target validation. In the course of her employment she worked with genetic technologies. She never had direct knowledge nor was informed that individuals in her lab adjacent to her were working with infectious, genetically engineered viruses.

7. In annual performance reviews with Pfizer through the year 2002 the plaintiff was commended for being hard working, diligent and received uniformly favorable reviews. In 1999 McClain received a patent in gDFusion protein, and was

praised for her work in the Veterinary Medicine Biological Unit.

8. In her 2000 annual review she was commended and it stated that “Becky showed initiative and risk-taking that directly led to solving the team’s most challenging technical problem.”

9. In the same performance appraisal, the defendant’s review contained the following remark: “Integrity serves as the foundation for all of her scientific work, which is always of high standard and quality.”

10. In her last year working at defendant’s Groton facility, the plaintiff developed a novel technology for the conditional expression of ShRNA systems.

11. In or around September of 2002, the plaintiff was working with a laminar hood when she noticed a noxious odor and began to feel nauseated and developed a headache and dry mouth.

12. Following this incident, the plaintiff, along with her supervisor, John Hambor (“Hambor”), and several other individuals, including a person from the Environmental Health and Safety Department at Pfizer became ill. The plaintiff, who was on a Safety Committee, was assured that the problems with the laminar hood would be rectified.

13. As of April of 2003, the cause of the noxious fumes and the illness of those working in the Lab B313 remained a mystery. During this entire time the plaintiff was subjected to repeated exposures. Ultimately, Hambor, McClain’s

supervisor, wrote a lengthy e-mail letter to request an immediate investigation.

From approximately September of 2002 through that time, nothing had been done to alleviate the problem and all corrective measures had failed.

14. In Hambor's e-mail of April 8, 2003, he stated that when "the hood has been turned on over the past 7 months, we immediately smelled the odor, became ill and had to evacuate the lab."

15. He also stated his concern in that e-mail that "the causative agent which produces the noxious odor that makes us sick resides in our lab, and not in the hood.

16. Following the date of the e-mail plaintiff reported the ongoing safety concerns and her desire to leave the lab.

17. In the months preceding the e-mail, Hambor had at various times cautioned McClain that she would lose her job if she made too big an issue out of lab safety.

18. Hambor told the plaintiff that he would falsify her future performance reviews and he told her they would be negative, and he threatened her in an aggressive fashion following the plaintiff's repeated complaints regarding safety. He forcibly backed the plaintiff into a wall during one encounter of February 4, 2003. This incident was documented and purportedly investigated, but the hostility continued.

19. In or about May of 2003, the plaintiff continued to be in Lab B313 and expressed her desire for a transfer because of the safety concerns and her ongoing illness. During the summer of 2003 she developed chronic fatigue symptoms and joint pain. She continued to report to Hambor until September of 2003. Following this, in November of 2003 she spoke to a co-worker by the name of William Blake who was working on dangerous lentivirus material and embryonic stem cells on an open lab bench without biological containment next to the plaintiff.

20. This lentivirus should have only been used in a biological hood with protection for both the individual working on it as well as those surrounding him. In December of 2003 McClain moved out of the B313 into an office in B312 due to a department reorganization.

21. In or around January of 2004 and into February of 2004 the plaintiff received a review from the previous year which misrepresented her work as below average. This was in spite of the fact that she also received an AIC team work award from a collaborator for a project that was done in 2003. Moreover, the review was from Hambor who was no longer plaintiffs supervisor.

22. Due to fatigue, suspicion of multiple sclerosis, joint pain, and numbness in her face as well as sleep difficulties the plaintiff went on a medical leave from February 24, 2004 through October of 2004. In spite of her medical leave, she received a letter from Susan Martin in Human Resources. The plaintiff was told in

letter of April of 2004 that she would not be retaliated against for raising a legitimate concern through the open door policy. At that time through October the plaintiff continued to raise safety concerns which were never addressed. A meeting was to be scheduled to address safety concerns but instead by way of a letter from Human Resources of October 20, 2004 the plaintiff was advised that she would be placed on unpaid leave with termination effective October 26, 2004 due to job abandonment if she did not return to work. She was never given any assurances of safety in the lab which plaintiff had found to be unsatisfactory.

23. The termination of McClain from the defendant Pfizer is a wrongful discharge of the plaintiff in violation of Pfizer's written and oral representations to McClain. It was also in violation of her employment contract and oral representations to plaintiff that she would not be terminated except for good cause. Indeed, Susan Martin from Human Resources at Pfizer had promised McClain that she would not be retaliated against in any way for raising health and safety concerns.

24. As a result of the wrongful discharge by the defendant Pfizer, the plaintiff has and will continue to suffer a loss of income and the benefits of employment.

25. As a result of the wrongful discharge by the defendant Pfizer, the plaintiff has suffered emotional distress and a loss of quality of life.

SECOND COUNT: (Connecticut General Statutes § 31-51m)

1. The plaintiff, Becky McClain (“McClain”), hereby refers to paragraphs 1 through 25 of the First Count and incorporates by this reference each and every allegation to the same force and effect as though fully set forth herein.

26. On or around October of 2004, prior to receiving the letter from Human Resources regarding the termination, the plaintiff had contacted OSHA regarding her concerns about biological contamination in the Groton Lab. McClain told OSHA that she wanted them to investigate lab conditions and she gave OSHA 5 (five) safety complaints.

27. Plaintiff has exhausted her administrative remedies with OSHA and a letter enclosing the final decision from Marthe B. Kent, the Regional Administrator, was dated September 27, 2006.

28. McClain was penalized by poor appraisal reviews, disciplined by Hambor, and she was ultimately discharged as a result of her OSHA complaints in violation of Connecticut General Statutes § 31-51m.

THIRD COUNT: (Connecticut General Statutes §31-51q)

1. The plaintiff Becky McClain hereby refers to paragraphs 1 through 28 of

the Second Count and incorporates by this reference each and every allegation as though fully set forth herein.

29. In making complaints to OSHA and in speaking to individuals in Pfizer's own Environmental Health and Safety Department, McClain was exercising her free speech in matters of public concern, protected by the First Amendment of the United States Constitution and Sections 3, 4, and 14 of the Connecticut Constitution.

30. The exercise of these rights did not materially interfere with McClain's duties at Pfizer, nor did it interfere with her job performance or working relationship with Pfizer.

31. McClain was penalized in terms of her performance appraisals at Pfizer and ultimately terminated as a result of exercising her rights of free speech.

32. Specifically, the negative review for the year 2003 and ongoing hostility through her termination in 2005 were acts of retaliation for her complaining about legitimate health and safety concerns in exercise of her free speech.

FOURTH COUNT: (PROMISSORY ESTOPPEL)

1. The plaintiff, Becky McClain ("McClain"), hereby refers to paragraphs one through twenty-five of the First Count and incorporates by this reference each and every allegation to the same force and effect as though fully set forth herein.

26. In accepting employment with the defendant and continuing to work at

Pfizer after representations were made to her, McClain relied on the defendant's promises of job security and at all times relied on the defendant's promises that they would not take any actions that would interfere with, disrupt, or otherwise impede her ability to earn wages as an employee of Pfizer. In addition, McClain was told that she would not be retaliated against for raising health and safety issues in the lab.

27. Defendant Pfizer should have reasonably expected that McClain would rely on its promises of job security and that it would support her in her work and not take any action to interfere with McClain's ability to earn wages and benefits and is therefore estoppel from denying the enforceability of its promises.

FIFTH COUNT : (DEFAMATION OF CHARACTER)

1. The plaintiff, Becky McClain ("McClain"), hereby refers to paragraphs one through twenty-five inclusive of the First Count and incorporates by this reference each and every allegation to the same force and effect as though fully set forth herein.

26. Defendant Pfizer, through its servants, agents, employees and/or representatives, uttered base and defamatory words which tended to injure the plaintiff's reputation. Specifically, the slanderous words were spoken to the plaintiff and to third persons at the facility regarding her being oversensitive about Harbor's

aggression in 2003. In addition, Hambor demeaned McClain in front of persons at Pfizer during a scientific presentation by dismissing her opinions. The written words included the negative review from 2003 which was disseminated to other individuals at the facility though her actual termination or separation date which Pfizer later provided to her, in May of 2005. These included a comment in her review that her performance did not meet the Scientist level and that she only partially met performance standards, which was untrue.

30. In addition, slanderous, libelous comments and writings were made to OSHA when Plaintiff requested that it follow up on her exposure records. Specifically, in corresponding with OSHA, the defendant characterized her work performance as being poor and also characterized her as seeking money. They also represented that she was overly sensitive with respect to conduct of her supervisor, Hambor. By expressing in writing that the plaintiff was looking for money and characterizing her refusal to return to work as “unjustified,” Pfizer caused damage both to her professional reputation, business reputation, and her stature as a Molecular Biologist for over twenty-five years and as such these comments defamed her character. The plaintiff, in consequence of said spoken words and written words has suffered in her reputation, and has been adversely affected in terms of her reputation in the Connecticut community in the field of biological research. Their actions have caused a damage to her business reputation and she

sustained lost wages as a result of her separation from employment. She has also sustained emotional upset, worry, and aggravation over the written and spoken words to OSHA, the negative job appraisals for 2003 which were exaggerated and fabricated and her characterization as someone merely looking for money.

SIXTH COUNT : (NEGLIGENT MISREPRESENTATION)

1. The plaintiff Becky McClain (“McClain”), hereby refers to paragraphs one through twenty-five inclusive of the First Count and incorporates by this reference each and every allegation to the same force effect as though fully set forth herein.

26. In making representations to the plaintiff that the lab environment was safe and that certain air testing had been performed to ensure the safety of Lab B313, the defendant made misrepresentations which the plaintiff relied on to her detriment.

27. Specifically, the plaintiff relied on the defendant for maintaining a safe work environment and relied on its word that her work conditions would at all times be safe.

28. In spite of the plaintiffs ongoing complaint about safety in Lab B313, she continued to be exposed to dangerous elements, including genetically engineered infectious viruses such as pMIG retrovirus and HIV-derived lentivirus that were not safely biocontained. Thus, the lab environment was not reasonably safe for

McClain who was only working in a lab coat.

29. The assurances made by Pfizer where negligent misrepresentations of the true condition of the lab during the time period the plaintiff worked at Pfizer and she now has a form of periodic paralysis for which has been treated with high doses of potassium and she has been diagnosed with hypokalemic periodic paralysis. The plaintiff was never advised while at Pfizer that infectious genetically engineered viruses were being used near her person.

30. The ongoing symptoms from her illness include fatigue, joint pain, muscle-cramps, neuromuscular pain, numbness, tingling, and paralysis which engulfs her entire body and makes it impossible for her to move. During these attacks, it is difficult for her to speak and she has no voluntary muscle control. The attacks themselves are accompanied by a severe chest pain and spinal pain. As a result of the drop attacks, her chronic fatigue, numbness, neuromuscular joint pain, and chest pain, she has suffered considerable mental anguish and many of these symptoms are continuing and upon information and believe will be permanent in nature. All of said conditions were a direct result of the exposures in the Groton labs.

SEVENTH COUNT : (FAILURE TO KEEP SAFE WORK ENVIRONMENT)

1. The plaintiff hereby refers to paragraphs one through thirty of the Sixth

Count and incorporates by this reference each and every allegation to the same force effect as though fully set forth herein.

31. The defendant's failure to advise plaintiff of the hazards in Groton labs and specifically operating Lab B313 in spite of the unsafe work environment makes them responsible and liable for McClain's injuries and damages pursuant to Connecticut General Statutes §31-49.

EIGHTH COUNT : (WILLFUL AND WANTON MISCONDUCT)

1. The plaintiff hereby refers to paragraphs one through thirty of the Sixth Count and incorporates by this reference each and every allegation to the same force effect as though fully set forth herein.

31. After September of 2002 and in October and through December of 2003, the plaintiff was exposed to hazardous substances while working in Lab B313. Specifically, the laminar or biological hood failure and the failure of the individual to safely work with the lentivirus caused her to be exposed with her hands touching the lentivirus on an open workbench or otherwise having it come in contact with her person through breathing or her skin. The plaintiff routinely worked in Lab B313 and was exposed to the lentivirus at the end of the year 2003 and was forced to work with the dysfunctional laminar hood in the year prior to that time frame.

32. After the exposures to the failed laminar hood and the lentivirus which

was on an open lab bench, the plaintiff developed jaw pain, paresthesias, severe fatigue, multiple sclerosis type symptoms, symptoms similar to hypokalemic periodic paralysis, and other potassium channeling disorders along with chest pain, shortness of breath, numbness, and joint pain.

33. The defendant created working conditions which they merely should have known would make the plaintiff's injuries substantially certain to occur. The plaintiff's bodily injuries were a direct and natural consequence of the defendant's willful misconduct and intentional acts and subjecting the plaintiff to this hazardous work environment. Specifically, the defendant knew these injuries would occur because:

a) there were ongoing complaints regarding the laminar hood dating back to September of 2002;

b) Pfizer knew that the proper safety protocol for working with lentivirus were to be only under a biological hood;

c) the defendant knew the danger and inherent risks posed by manipulating and changing biological material to create human infectious genetically engineered viruses containing molecular missiles to invade human cells and cause targeted genetics alterations and disease;

d) the defendant knew from written publications regarding the kits it received from, among other institutions, MIT and knew from its experience in working with

genetic materials that the lentivirus and genetically engineered substances should not have been exposed to someone like McClain who was working with only the protection of a lab coat.

34. The plaintiff's debilitating and limiting injuries was substantially certain to occur and were approximately caused by the willful misconduct by the defendant in that it:

a) improperly designed the laminar flow hood in Lab B313 so that noxious odors and noxious and harmful biological material would be exposed to its workers;

b) improperly tested the laminar flow hood in such a way that it would deem the hood safe when in fact it was not safe and continues to cause illness to the plaintiff and other individuals.

c) failed to safely and properly dispose of harmful biological substances in Lab B313 resulting in the release of genetically engineered infectious agents into the lab environment;

d) improperly permitted an individual to work with a lentivirus on an open lab bench;

e) failed to implement proper procedures for biological contamination so that it would not effect workers inside the lab subject the plaintiff to hazardous and biologically harmful genetically altered material;

f) failed to provide adequate devices to the plaintiff;

g) implemented inadequate and unsafe protective measures;

h) failed to advise and provide adequate information to the plaintiff regarding possible exposure and risk assessments for working in the lab and failed to advise of the use of infectious agents in the lab and inform her the dangers associated with exposure to the lentivirus and other biological contaminants;

l) failed to properly monitor the lab and the safety inside the lab to prevent the risk of exposure to individual and their subsequent infection;

j) failed to provide her with an alternative work space during the time it knew of harmful exposures; and/or

k) failed to perform any adequate risk assessments for individuals like plaintiff working in the lab to ensure safe handling of viruses.

35. As a result of the intentional willful misconduct of Pfizer, its employees, servants and special agents, it was substantially certain that the plaintiff would sustain a permanent and disabling condition caused by the exposure to the lentivirus and other biological contaminants. This has led to the severe disability of the plaintiff.

36. The plaintiff's injuries are permanent in nature and there is no known treatment or cure at this time for her condition. Therefore, the plaintiff's debilitating condition could lead to increased respiratory and cardiopulmonary difficulties and

increased risk of damage to her immune system, and a decrease in her life expectancy.

37. As a further result of intentional willful misconduct of the defendant, the plaintiff has incurred and incur into the future medical expenses attending to hospital and neurological care, prescription medication, diagnostic testing, and other medical treatment.

38. As a further result of the intentional and willfulness misconduct of Pfizer, the plaintiff, who was gainfully employed at the time, lost considerable time from work and was unable to work, and lost their wages and benefits therefrom. The plaintiff's earning capacity has been permanently diminished all to the plaintiff's further special damages.

39. As a further result of the willful, intentional conduct of Pfizer, the plaintiff has been restricted and prevented from pursuing activities in which she had engaged prior to the date of her disabilities and her ability to enjoy life's offerings has been severely impaired.

WHEREFORE, the plaintiff claims the following relief:

1. Compensatory damages on all counts;
2. Common law punitive damages;
3. Liquidated damages;
4. Attorney's fees and costs; and
5. Such other and further relief as the Court may deem just and proper.

PLAINTIFF, BECKY MCCLAIN

By _____
Bruce E. Newman
Newman, Creed & Associates

Her Attorneys

CERTIFICATION

This certifies that a copy of the foregoing was mailed, postage prepaid, on this 20th day of February, 2007 to:

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Bruce E. Newman