

## Millennium Labs Faces Medicare Whistleblower Retaliation Suit

By Matt Phifer

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- Former employee claims Millennium Laboratories fired him about one month after pointing out flaw to president
- Millennium Laboratories already settled false claims suit with government for \$256 million

Millennium Laboratories will have to explain why it terminated an employee who blew the whistle on alleged false claims it submitted to Medicare.

The U.S. District Court for the Southern District of California will allow Ryan Uehling's case to move forward despite Millennium's protests that Uehling was not engaged in an activity protected by the False Claims Act. In allowing the case to move forward, the court does not see a problem with Uehling's slightly different explanation to the court about what he told Millennium's president in a previous retaliation case.

Uehling said he approached the company's president, Howard Appel, twice while acting as Millennium's western regional sales director to express his concerns about the legality of the company's practice of billing Medicare for lab testing that did not account for individual patients' needs. Millennium fired Uehling about one month after his second conversation with Appel.

Uehling filed a whistleblower suit against Millennium, alleging fraudulent billing and retaliation. The government intervened and Millennium settled for \$256 million, but the retaliation suit was not resolved.

A successful retaliation claim under the FCA requires a plaintiff to prove 1) they were engaged in an activity protected by the FCA; 2) the employer had knowledge of the activity; and 3) there was resulting discrimination, such as termination. In denying Millennium's motion for summary judgment, the court ruled that a jury could find that Uehling met these elements.

Millennium argued that Uehling's current testimony that he told Appel the company's practices didn't seem legal was inconsistent with his testimony as a witness in a previous whistleblower action against Millennium. In *Nelson v. Millennium Labs., Inc.*, No. 2:12-cv-01301-SLG, 2014 BL 490687 (D. Ariz. 2014), Uehling said he never used the words "illegal activities," "illegal," "fraudulent," or "unethical" when speaking to Appel. The court ruled that those statements were not inconsistent with his current testimony that he used the phrase "doesn't seem legal," so the case can move forward.

Attorneys for Uehling and Millennium Laboratories did not respond to Bloomberg Law's request for comment.

This case is Uehling v. Millennium Labs., Inc., 2018 BL 167189, S.D. Cal., No. 3:16-cv-02812-L-MDD, 5/10/18.

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