



New York Court of Appeal Rules: Laboratory Suable for False Positive Test Results

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Last Thursday, the New York Court of Appeals ruled in a 4-3 decision that a man may bring a negligence claim against a drug testing company for a false positive drug test.

At the time of the disputed test results, Eric Landon (“Landon”) was 42 years old and was ordered^[1] to random drug testing as part of his probation for a felony conviction for prescription drug forgery. The Orange County Probation Department (“Probation Department”) ordered Landon to comply with the random drug testing at the contracted defendant lab facility (the “Laboratory”).

The cause of action arises from the results of a saliva test analysis Landon conducted in 2007 at the Laboratory located in Orange County. Landon alleged that he received contradictory lab results for his marijuana drug tests. According to his claims, Landon tested positive for marijuana on a saliva sample he provided to the Laboratory as part of his condition for probation. On the same day, Landon also tested negative for marijuana on a blood test and urinary test he conducted in a separate and private drug testing laboratory.

Upon receipt of the Laboratory’s “positive” test results, probation officials petitioned to revoke Landon’s probation. However, the petition was withdrawn once the probation officers learned of Landon’s negative test results with the private lab.

Landon claims that as a result of the false positive, he not only lost a promised job, but the test results led to a loss of \$5000 in litigation fees and the breaking off of his engagement.

Upon review, the New York Court of Appeals held that the Laboratory’s contract with the Probation Department established a “duty of care” from the Laboratory to Landon because his terms of probation mandated random drug testing at the Laboratory. Accordingly, the Laboratory breached its duty of care when the Laboratory negligently administered Landon’s drug test resulting in a false positive.

In reaching its decision, Chief Judge Johnathan Lippman wrote in the opinion, “[w]ithout question, the release of a false positive report will have profound, potentially life-altering, consequences for a test subject.” Chief Judge Lippman went on further to write, “[t]he laboratory is also in the best position to prevent false positive results. Under the circumstances, we find that the Laboratory had a duty to the test subject to perform his drug test in keeping with relevant professional standards.”

Thus, recognizing the aggravated results that may possibly occur from a negligently administered drug test, the New York Court of Appeals held that Landon had a viable claim and could sue the Laboratory for breach of its duty of care.

Judge Eugene Pigott Jr. issued a dissenting opinion and found that the majority's decision "opens the door" for third party-law suits against independent lab companies by probationers, job applicants and other people subject to drug testing. In particular, Judge Pigott highlighted the fact that the complaint lacked any allegations that the Laboratory either "mishandled, tampered with or misidentified the sample." The allegations only proposed that the Laboratory used a lower threshold for lab testing than that required by federal guidelines.

Judge Robert Smith also issued a separate dissenting opinion that criticized the majorities ruling as unnecessarily "invent[ing] a new tort."

Whether this ruling will "open the door" to a new class of litigation or tortious actions only time will tell. What is for certain is that the Court's decision to expand the scope of the duty of care beyond the contracting parties will certainly affect how these contracts are executed in the future. To learn more about this recent Court ruling, please return to this blog for future updates.

If you or your company would like more information on employment law, contact James G. Ryan at jryan@cullenanddykman.com or via his direct line at 516-357-3750.

A special thank you to Melissa Cefalu, a law clerk at Cullen and Dykman, for her assistance with this blog post.

1. Landon was sentenced to five years of probation for second-degree forgery in January 2002 which also required that Landon submit to random drug testing throughout the duration of the probationary sentence.