

VIGNETTES

Santa Clause: Settlement Agreements

Table 3

Scene No. 1

Your client, SAU 1001, runs a large school district in central New Hampshire. The SAU contracted with General Construction, a large and reputable general contractor known for its expertise in commercial construction projects, to build a new high school for the SAU. General Construction subcontracted all of the earth moving and site work to SloppyCo., an excavation company that was based in the same town as the planned school. While performing the site work, SloppyCo. inadvertently changed the grade of the athletic fields from that called for in the plans for the project, resulting in flooding and drainage problems 6 months a year, rendering the 25-acre athletic complex unusable. About a year after completion, SAU 1001 hired Hicks Construction, a statewide excavation company, to address the flooding. Hicks billed the SAU \$1.5 million to fix the problem, and the SAU has since sued General Construction for negligence, breach of contract, and Consumer Protection Act violations.

Recognizing that it failed to catch this large and costly error on a highly visible project, General offers to mediate the case before an answer is filed, and strongly suggests that it is willing to pay the full dollar amount of the SAU's losses. Lawyers for the SAU General Construction are at the table with the mediator.

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Scene No. 2

Scott Calvin, a 68 year- old man, has been employed by North Pole Inc. as a deliveryman for 30 years. His average gross income is \$75,000 per year. Although he had several performance reviews critiquing his interactions with customers over the years, overall his reviews had been positive. In 2014, he was diagnosed with cancer. After taking a brief leave of absence, he returned to work in late 2014 on a modified schedule to accommodate his cancer treatments. In 2016, Judy Elf, the Company’s Director of Customer Service, received a complaint from a customer, Neil Miller, alleging that Mr. Calvin had made a series of derogatory comments to him during his most recent drop off. Specifically, Mr. Miller accused Mr. Calvin of criticizing his sweaters and calling him a “Weenie Whistle.” The Company has a policy requiring its employees to treat customers with respect. After receiving the complaint, Ms. Elf spoke internally to Bernard Elf (no relation), the Company’s CEO, regarding the complaint. Based on the complaint, as well as the prior citations in Mr. Calvin’s personnel file, the Company decided to terminate his employment. Therefore, two days after receiving the complaint, Ms. Elf called Mr. Calvin in for a meeting, informed him of the complaint and that his employment was being terminated effective immediately.

Mr. Calvin brought a lawsuit against North Pole Inc. alleging that his termination was in retaliation for seeking an accommodation under the Americans with Disabilities Act, discrimination on the basis of age, and against public policy. North Pole Inc. and Mr. Calvin are scheduled for mediation seeking to settle the claim. In advance, the parties’ attorneys attempt to settle the matter over the phone ahead of time.