

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MALRY TARDD, and OTTO WHITE

Plaintiffs,

-against-

Docket No.: CV-04-3262
(ADS) (ARL)

ELECTRONICALLY FILED

BROOKHAVEN NATIONAL LABORATORY, a.k.a and/or d/b/a BROOKHAVEN SCIENCE ASSOCIATES, CONRAD FORSTER, in his individual and official capacity; MICHAEL GOLDMAN, in his individual and official capacity; WILLIAM HEMPFLING, in his official and individual capacity; SUE FOSTER, in her official and individual capacity; WALTER DEBOER, in his official and individual capacity; STEVE DIERKER, in his official and individual capacity; ED HAAS in his official and individual capacity; MICHAEL CARUSO, in his official and individual capacity; MICHAEL BEBON in his official and individual capacity; DEREK LOWENSTEIN, in his official and individual capacity; WILLIAM GUNTER in his official and individual capacity; THOMAS SHERIDAN in his official and individual capacity; PETER PAUL, in his official and individual capacity; KENNETH BROG in his official and individual capacity

Defendants.
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PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS "CERTAIN NEW CLAIMS IN PLAINTIFFS' FOURTH AMENDED COMPLAINT" DATED OCTOBER 5, 2007.

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PRELIMINARY STATEMENT

Plaintiffs respectfully submit this memorandum in opposition to Defendants' motion to dismiss "certain new claims in plaintiffs' fourth amended complaint" dated October 5, 2007. In short, Defendant's instant motion to dismiss must be denied in its entirety because the fourth amended complaint sufficiently alleges more than enough facts to sustain Mr. Tardd's newest claims for wrongful termination and discrimination/retaliation with respect to Defendants' actions, which led to the denial of disability and workers compensation benefits to Mr. Tardd. In addition, Mr. Tardd properly and timely filed his newest complaint with the EEOC. Finally, despite Defendants' attempts to place blame on non-parties for the denial of the aforementioned benefits to Mr. Tardd, Plaintiffs assert (and can prove) that it was Defendants' retaliatory actions against Mr. Tardd, which led to the denial of benefits - as alleged in the Fourth Amended Complaint.

Accordingly, Plaintiffs respectfully request that Defendants' motion be disregarded and that the Court allow the Parties to proceed with discovery on all of Mr. Tardd's newest claims.

FACTS RELEVANT TO THIS MOTION

The following facts were taken directly from Plaintiffs' Forth Amended Complaint (hereinafter "Complaint") at paragraphs 95 through 137. Plaintiff respectfully requests that the Court refer to said paragraphs for a more detailed description of the relevant facts in this current matter. As mentioned in the previous complaints, due to the