THE GOOD NEWS AND BAD NEWS ON EMPLOYMENT AT WILL

Prepared for the Continuing Education Seminar, "*Employee Discipline and Discharge: How to Avoid Employment Litigation in West Virginia*" hosted by Lorman Education Services

August 27, 2008, Morgantown, West Virginia

Prepared and Presented By:

Drew M. Capuder
Capuder Fantasia PLLC
Manchin Professional Building
1543 Fairmont Avenue, Suite 207
Fairmont, West Virginia 26554
304-333-5261 (Voice)
304-367-1868 (Facsimile)
E-Mail: dcapuder@capuderfantasia.com
Web Page: www.capuderfantasia.com

Table of Contents

I. Introduction and Scope of Article

A. My Background

1. My office and firm are in Fairmont, and I am licensed in West Virginia and Texas. I have been practicing law for 23 years.

2. I went to law school in Houston and have been licensed there since 1985. When my wife and I moved to Fairmont, I became licensed in West Virginia.

3. The focus of my practice for about the last 13 years has been employment-related litigation and consulting; and I did commercial litigation for about 10 years before that in Houston.

4. I also am a mediator, and have taken the basic and advanced courses from the West Virginia State Bar.

5. My teaching experience consists of a class in legal writing at University of Houston Law School for several years, and consists of a class for the last 2 years at Fairmont State University in "Ethical and Legal Issues in Media".

B. Scope of article

6. This article focuses on employment at will rule, which is function of West Virginia employment law. The exceptions to the employment at will rule pull in both West Virginia and federal law. There is a great deal of seminar and education material on the

federal employment laws, but relatively little on West Virginia employment law. SO I will put much more emphasis on the West Virginia law.

7. West Virginia largely mirrors the anti-discrimination provisions of federal law, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. *See* WEST VIRGINIA HUMAN RIGHTS ACT of 1967, W. VA. CODE § 5-11-1 *et al.* (1998).

8. However, the West Virginia Human Rights Act makes significant departures from the federal law. Perhaps even more importantly, the West Virginia Supreme Court has interpreted the Human Rights Act significantly more favorably to the employee, compared to federal court interpretation of the federal employment laws.

9. So, given the relative scarcity of information on the West Virginia employment laws, and the dangers those laws pose for employers, I think it is useful for me to put significant emphasis on the West Virginia law.

II. List of Decisions on Employment at Will Rule

Decisions on Employment at Will Rule	
Decision	**Summary**
Skaggs v. Elk Run Coal Company, Inc., 198 W. Va. 51, 79, 479 S.E.2d 561, 589 (1996)	"It is important that litigants and lower courts do not read too much into today's ruling. To be sure, our discrimination laws are not a form of job assurance for handicapped individuals or any other protected class members. Employers retain the right to restructure jobs and exercise business judgment, including even bad judgment. Employees can be let go for any reason or for no reason, provided that the reason is not a prohibited one. *See Guyan Valley Hosp. v. West Va. Human Rights Comm'n*, 181 W.Va. 251, 382 S.E.2d 88 (1989), overruled on other grounds by *West Va. Univ./W. Va. Bd. of Regents v. Decker*, supra (" '[i]llegal discrimination' means treating individuals differently because of some individual trait that the law says can't legitimately be considered. Examples of such traits are race, age, sex and handicap"). Accommodation regards efforts that address an individual's ability to perform a job, not his or her entitlement to it."

III. The Good News: What is "Employment at Will" and What Does it Do for Employers?

10. The employment at will rule is followed in West Virginia, which allows an employer to fire an employee (or make other employment decisions) for:

a. "good reasons",

b. "bad reasons", or

c. "no reason at all".

Skaggs v. Elk Run Coal Company, Inc., 198 W. Va. 51, 78, 479 S.E.2d 561, 588 (1996).

11. The rule has also been stated as follows: "[I]n the absence of some contractual or legal provision to the contrary, an employment relationship may be terminated, with or without cause, at the will of either the employer or the employee." *Bine v. Owens*, 208 W. Va. 679, 682, 542 S.E.2d 842, 845 (2000).

12. But an employer cannot fire an employee for a *specifically prohibited reason.* The central and critical focus is on the *employer's motivation*. Was the employer motivated by a *specifically* prohibited reason, in which case the termination may be actionable, or by any other reason, in which case the termination will not be actionable?

IV. The Bad News: When is it Limited by the Employer or by Other Law?

A. Limitations Imposed by Law

13. The employment at will rule says you can terminate an employee for any reason at all, except for "specifically prohibited reasons".

14. So what are specifically prohibited reasons? The following is a *non-exclusive list*:

15. From the WEST VIRGINIA HUMAN RIGHTS ACT, W. VA. CODE § 5-11-9(3), you can't fire (or otherwise disadvantage) an employee:

a. Because of the employee's **race**

b. Because of the employee's **religion**

c. Because of the employee's **color**

d. Because of the employee's **national origin**

e. Because of the employee's **ancestry**

f. Because of the employee's **sex**

g. Because of the employee's **age**

h. Because of the employee's **blindness or disability**

16. From the WEST VIRGINIA WORKERS' COMPENSATION ACT, W. VA. CODE § 23-1-1 *et seq.,* you can't fire (or otherwise disadvantage) an employee:

a. Because the employee **received or attempted to receive benefits under the Act**, § 23-5A-1

b. Because the employee is **"off work due to a compensable injury" and "is receiving or is eligible to receive temporary total disability benefits"**, § 23-5A-3(b)

17. Under the doctrine enunciated in *Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 275 (1978) (emphasis added), a discharge is actionable where the ***"employer's motivation* for the discharge contravenes some *substantial public***

***policy* principle."** The categories thus far of prohibited reasons under the *Harless* doctrine are:

a. Because the **employer pressured the employee to break the law and the employee refused** [Example: Employer fired employee for refusing to operate vehicle with brakes in unsafe working condition in violation of specific W. Va. statutes. *See, e.g., Lilly v. Overnight Transportation Co.*, 188 W. Va. 538, 425 S.E.2d 214 (1992)].

b. Because the **employee complained about the employer breaking the law (regardless of whether the complaining employee himself was pressured to break the law)** [Example: Employee complains that his employer bank is overcharging customers in violation of consumer protection law, and employer retaliates and fires the employee, *see, e.g., Harless v. First National Bank of Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 275 (1978)].

c. Because the **employer insisted that employee do something which violated a right of the employee, and the employee refused** [Example: Employee refused to take a mandatory drug test and got fired; the demand for a drug test violated the employee's right of privacy, and the employer's termination of the employee was actionable, *Twigg v. Hercules Corp.*, 185 W. Va. 155, 406 S.E.2d 52 (1990)].

d. Because the **employee did something which the law regards as a right** [Example: Employee in convenience store is being robbed, in self defense shoots the robber, and employer fired the employee; employee exercised *right* of self-defense and could not be fired for doing so, *Feliciano v. 7-Eleven, Inc.*, 210 W. Va. 740; 559 S.E.2d 713 (2001)].

18. *For West Virginia State employees*, differential treatment amongst "similar situated employees" of covered employees is discriminatory **"regardless of the basis for the discrimination"**. *Pritt v West Virginia Division of Corrections*, 630 S.E.2d 49 (W. Va. 2006)

(*quoting Board of Education of the County of Tyler v. White*, 216 W. Va. 242, 246, 605 S.E.2d 814, 818 (2004)); W. VA. CODE § 29-6A-2(d) (1988) (prohibited discrimination for State employees defined as "as differences in treatment of employees unless such differences are related to the actual job responsibilities of the employees or, agreed to in writing by the employee"); W. VA. CODE § 18-29-2(m) (1992) (same as to education employees).

19. For West Virginia Employees working for a "public body" (W. Va. Code § 6C-1-2(b) & (e)) the "Whistle Blower Law" protects a "Whistle-blower" who "witnesses or has evidence of **wrongdoing or waste** while employees with a public body and who **makes a good faith report** of, or testifies to, the wrongdoing or waste, verbally or in writing, to one of the employee's superiors, to an agent of the employer or to an appropriate authority" (W. Va. Code § 6C-1-2(g).

a. **"Wrongdoing"** means a "violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public of the employer" (W. Va. Code § 6C-1-2(h)).

b. **"Waste"** means "an employer or employee's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision resources" (W. Va. Code § 6C-1-2(f)).

B. Limitations (and Benefits) Imposed by Handbooks and Policies

Benefits of Handbooks and Policies

20. In *Colgan Air, Inc. v. West Virginia Human Rights Commission*, 221 W. Va. 588, 656 S.E.2d 33 (1977) the West Virginia Supreme Court addressed claims of harassment (based on religion and national origin) and retaliation by a pilot, Rao Zahid Khan, and ruled that Colgan Air (a) was not liable for harassment because it had policies and procedures prohibiting harassment and took swift and decisive action after learning about the harassment, and (b) was not liable for retaliation because Colgan Air terminated the employee (Mr. Khan) for a legitimate and non-discriminatory reason--he failed to pass a mandatory FAA proficiency test for pilots.

21. In *Colgan Air*, the harassment was by co-workers, as opposed to supervisors, and that is an important distinction in law governing sexual and other types of harassment. 656 S.E.2d at 40-41. While federal law under Title VII is much more complicated, under the West Virginia Human Rights Act, it is likely that an employer will be virtually automatically liable for sexual and other types of harassment if the harassment is by a supervisor, whereas the employer's policies and response to a complaint of harassment may well insulate it from liability when the harassment is by a co-worker with no supervisory authority.

22. So the Court in *Colgan Air* explained:

> When the source of the harassment is a person's co-workers and does not include management personnel, the employer's liability is determined by its knowledge of the offending

> conduct, the effectiveness of its remedial procedures, and the adequacy of its response. Thus, an employer that has established clear rules forbidding sexual harassment and has provided an effective mechanism for receiving, investigating, and resolving complaints of harassment may not be liable in a case of co-worker harassment where the employer had neither knowledge of the misconduct nor reason to know of it.

Colgan Air, Inc. v. West Virginia Human Rights Com'n, 656 S.E.2d 33, 40 (W. Va. 2007) (*quoting Hanlon v. Chambers*, 195 W.Va. 99, 108, 464 S.E.2d 741, 750 (1995)).

23. The severity of the harassment will have a lot to do with the investigation and correction action which may be necessary to protect the employer from liability:

> [t]he aggravated nature of discriminatory conduct, together with its frequency and severity, are factors to be considered in assessing the efficacy of an employer's response to such conduct. Instances of aggravated discriminatory conduct in the workplace, where words or actions on their face clearly denigrate another human being on the basis of race, ancestry, gender, or other unlawful classification, and which are clearly unacceptable in a civilized society, are unlawful under the West Virginia Human Rights Act, West Virginia Code §§ 5-11-1 to -20 (1999), and in violation of the public policy of this State. When such instances of aggravated discriminatory conduct occur, the employer must take swift and decisive action to eliminate such conduct from the workplace.

Colgan Air, Inc. v. West Virginia Human Rights Com'n, 656 S.E.2d 33, 41 (W.Va.2007) (*quoting* Syl. pt. 3, *Fairmont Specialty Services. v. West Virginia Human Rights Comm'n,* 206 W.Va. 86, 522 S.E.2d 180 (1999)).

24. Colgan Air was a 3-2 decision. Justices Davis, Maynard, and Benjamin joined in the "per curiam" majority opinion, and Justice Albright dissented and wrote an opinion, and Justice Starcher also dissented and wrote an opinion. Both Justices Albright and Starcher agreed with the majority that Mr. Khan properly lost his job because of his failure to pass the FAA proficiency test, but dissented because they believed that Colgan Air was properly held liable for the harassment (based on religion and national origin).

Handbooks and Policies in Alleged Contract Litigation

25. Handbooks and policies are also relevant in a broad range of litigation claims where employees point to promises, commitments, or purported contracts to provide contract-based rights. These cases frequently additionally point to particular provisions in a handbook, for example, with a claim some handbook provision created a contract right. Then employers frequently want to rely upon provisions of a handbook that typically stress that nothing in the handbook alters the at will relationship between the employer and employee.

26. These claims and issues are almost invariably determinated by state contract law, and state law pertaining to the employment at will relationship.

27. The West Virginia Supreme Court has put a heavy burden on the employee claiming a contract: "Where an employee seeks to establish a permanent employment contract *or other substantial employment right,* either through an express promise by the employer or by implication from the employer's personnel manual, policies, or custom and

practice, *such claim must be established by clear and convincing evidence.*" *Tiernan v. Charleston Area Medical Center, Inc.*, 212 W.Va. 859, 865-866, 575 S.E.2d 618, 624 - 625 (2002) (emphasis in original) (*quoting* Syllabus Point 3 of *Adkins v. Inco Alloys Intern., Inc.,* 187 W.Va. 219, 417 S.E.2d 910 (1992)).

28. Here is a list of other cases raising issues related to handbooks and policies:

a. *Bine v. Owens*, 208 W. Va. 679, 542 S.E.2d 842 (2000)

b. *Lipscomb v. Tucker County Commission*, 206 W. Va. 627, 527 S.E.2d 171 (1999)

c. *Pleasant v. Elk Run Coal Company, Inc.*, 199 W. Va. 629, 486 S.E.2d 798 (1997)

d. *Eaton v. City of Parkersburg*, 198 W. Va. 615, 482 S.E.2d 232 (1996)

e. *Williams V. Precision Coil*, 194 W. Va. 52, 459 S.E.2d 329 (1995)

f. *Bowe v. Charleston Area Medical Center, Inc.*, 189 W. Va. 145, 428 S.E.2d 773 (1993)

g. *Suter v. Harsco Corporation*, 184 W. Va. 734, 403 S.E.2d 751 (1991)

h. *Cook v. Heck's, Inc.*, 176 W. Va. 368, 374, 342 S.E.2d 453, 459 (1986)

i. *Younker v. Eastern Consolidated Coal Corp.*, 591 S.E.2d 254 (2003) (code of ethics of company protected employees who reported code violations, but that provision did not create a contract modifying employment at will rule; summary judgment and judgment in favor of employee was reversed)

j. *Minshall v. Health Care & Retirement Corp. of America*, 208 W. Va. 4, 537 S.W.2d 320, 325 (2000) ("[A]n employee handbook may form the basis of a unilateral contract if there is a definite promise therein

> by the employer not to discharge covered employees except for specified reasons.") (quoting *Cook v. Heck's Inc.*, 176 W. Va. 368, 342 S.E.2d 453 (1986) (syllabus point 6))

V. Some Advice on Prevention of Litigation

A. Preliminary Thoughts

29. Minimizing risk of litigation should not be seen as simply something to examine at the precise point of termination. Minimizing litigation risk should be viewed "holistically" (to the extent that is a sound metaphor for looking at the larger employment organization). Risks that can rear their ugly heads in the form of a lawsuit can arise at different physical locations in a workplace, at different points in time, by different people. So what follows is an effort to identify the things that cause risk of employment problems in a workplace, followed by what to do about those points of risk.

B. What Causes Risk in the Workplace?

30. A lot of different things can cause risks for employment disputes in the workplace. The list that follows doesn't contain divine insight, but it's a way of trying to look at the "big picture" to start seeing the potential for risk in the workplace. (In the terminology that follows, I am intentionally using a non-legal term ("things") to start thinking about what causes risk--it doesn't take a mental giant to see the risks inherent in the items that follow).

31. **Physical things** can cause risk:

a. **Physical facilities and layouts** of businesses can cause risks. Buildings, walls, furniture, windows (or lack thereof). Maybe the most obvious examples would relate to workplace accommodation and access issues for the disabled (for customers, but, more to the point of this article for employees). But physical layouts can also have implications for other types of workplace employment issues.[1/] Sexual harassment may occur with greater ease in certain types of physical layouts--and I am referring to both physical plant (like buildings and walls) and to configurations of employee and furniture placement within the walls and buildings.

b. **Computers** can cause risk. Screen savers, emails, etc., have played prominent roles in employment litigation, especially in sexual harassment litigation.

32. **Documents** can cause risk:

a. **Policies**, such as discrimination policies, complaint procedures, grievance procedures, computer and email usage policies, document retention policies, etc., can cause risks;

b. **Emails and memos and letters** can cause risks, even beyond classic examples like sexual harassment; and

c. More specific types of documents:

i. Termination letters,

ii. Performance reviews,

iii. Job offer letters,

iv. Disciplinary memos,

v. Grievance decisions, and

[1/] I view workplace violence issues to be outside the scope of this article, except to the extent that they may relate to sexual harassment.

vi. Etc., etc., etc.

33. **Conduct** can cause risk:

a. **Decisions** on any number of things, including who gets what benefits:

i. Termination,

ii. Hiring,

iii. Promotion,

iv. Raises,

v. Evaluations,

vi. Educational reimbursement benefits,

vii. Vacation,

viii. Sick time, and

ix. Investigations and action taken in connection with complaints;

b. Treatment of employees, in broad range of settings:

i. Sexual conduct,

ii. Demeanor: angry, mean, profane, belittling, humiliating,

iii. Disparaging remarks especially based on protected characteristics: gender, race, age, disability, etc.,

iv. Favoritism (sexual favoritism, cliques, factions, geographical favoritism),

v. Exclusion from meetings or other important activities,

vi. Denial of accommodations (both legally mandatory, like reasonable accommodations, and not legally required--simple courtesies), and

vii. Denial of perks and favors;

c. Breaking the law:

i. Conduct that directly violates employment law (such as age discrimination), and

ii. Conduct that violates some other law (like selling a dangerous product), but that might give rise to a whistle blower claim.

34. **People** can cause risk:

a. Supervisors;

b. Co-workers (peers);

c. Human resources/ personnel employees;

d. Customers (they can hit on employees, and employers may be responsible); and

e. Vendors (the delivery guy could hit on an employee).

C. Who might complain and who might sue?

35. **Current employees** might complain about something, such that the complaint may create risks. There are different types of employees who might make complaints:

a. The complainer;

b. The lawsuit seeker (these first two categories are not necessarily the same thing, but the lawsuit seeker obviously presents a greater risk,

and sometimes such people take (steal) documents and make tape recordings);

c. The bad employee (the bad employees are frequently complainers and/or lawsuit seekers); and

d. The good employee (even good, honest employees sometimes complain in ways that create risks, and sometimes the risk arises because the good employee is complaining about the bad employee).

36. Former employees. They consist of all of the same personality or performance types as the "current employees" described above, but they should be examined separately. At first blush, you would think that you have a lot more control over situations involving the "current employees", but an employer can have a surprising amount of control over the actions of former employees. More about that below.

37. Other persons who might complain:

a. Relatives of employees who think they are being treated badly;

b. Friends of employees who think they are being treated badly;

c. Co-workers of employees. They might complain about (or "oppose") perceived mistreatment of co-workers, and that might make them protected from retaliatory action, assuming the complaint relates to something that might be violating the law. I put these people in the "other persons" category because they fit the mold of persons who are complaining about the treatment of *someone else*;

d. Customers;

e. Vendors;

f. Lawyers of almost any of the above, but especially current and former employees. I tend to classify lawyers in this setting into one of three categories:

i. The good lawyer,

ii. The stupid lawyer, and

iii. The dishonest lawyer.

iv. (Note: In assessing an employer's risk, it is important for me to understand these possible characteristics of the lawyer.)

D. Points in time at which risk arises

38. It is important to focus on the points in time at which risks arise. Policies, as an example of something more tangible, may not pose particular risks until *something happens* to trigger the risk.

39. Here are examples of the key points in time at which risk arise:

a. Drafting/formulation of policies/procedures;

b. Creating a position;

c. Posting a position;

d. Interviews;

e. Hiring;

f. Reviews;

g. Discipline;

h. Investigations;

i. Grievance proceedings;

j. Promotions;

k. Raises;

l. Termination;

m. Phone calls/discussions with employees after termination (including the exit interview);

n. Sending an explanation for termination (including responding to proceedings such as claims for unemployment benefits);

o. Reductions in force; and

p. Plant closings.

E. What do you do to control the risk?

40. For each of the items above (things, people, documents, conduct, decisions, etc.) you want to survey your company's operating procedures. Look at, for each item:

a. Current practices at the company;

b. Current documents that relate to the event/item;

c. What are we doing wrong?;

d. What are we doing that may be failing to comply with the law (that is potentially a very different issue from what we are doing wrong)?;

e. What risks arise out of both:

i. The event, even if we are handing it perfectly,

ii. Our practices, if those practices are imperfect, and

iii. (Note: In other words, what are the inherent risks attached to the event/situation, and what are the risks attached to our imperfect handling of it?);

f. How can we reduce the risks:

i. Changes in policies/procedures;

ii. Changes in practices;

iii. Changes in documents;

iv. Changes in training; and

v. Changes in follow up.

F. Forums in which risks and exposure are addressed

41. What you do to control risks is aided by an understanding of the forums in which employment problems are discussed or adjudicated or otherwise addressed:

a. Informal meetings and discussions;

b. Internal grievance processes;

c. Union grievance proceedings;

d. Equal Employment Opportunity Commission;

e. Department of Labor (federal and state);

f. West Virginia Human Rights Commission;

g. Arbitration;

h. Mediation;

i. Court:

i. Trial courts, and

ii. Appellate courts.

G. Possible Outcomes in Litigation

42. From the company's perspective, in examining possible outcomes in litigation, I think of 4 possible categories of outcome possibilities:

a. You (your company) did nothing wrong, and there is no realistic possibility that you will be adjudicated to have violated the rights of the plaintiff-employee.

b. You very likely did nothing wrong, and a reasonable judge or jury should find in your favor, but there is a realistic possibility that a judge or jury could find against you.

c. There is significant evidence that you did something wrong, and a reasonable judge or jury could find for you or against you.

d. There is very significant evidence that you did something wrong, and it is much more likely than not that a judge or jury will find against you.

43. An important thing to understand is that these evaluations should be made from the perspective of the hypothetical fair-minded finder of fact (judge, jury, arbitrator). In evaluating your risk, there is no other reasonable perspective by which the situation should be evaluated. It simply doesn't matter what you *think* happened or what you *know* happened (and I would encourage both sides in litigation to seriously consider whether they can very often honestly say they *know* what happened). Your subjective belief on whether wrong-

doing occurred has very little to do with what a jury or judge might conclude. Furthermore, for the *facts* on which your impressions are based, if you have a significant familiarity with a particular employment dispute at your company, a number of things safely can be said:

a. You know facts (or believe you know facts) which the jury will never know, so any reliance on those facts will improperly skew an evaluation of that the jury will likely conclude.

b. You don't know facts the jury will likely learn at trial from your opponent. No matter how well you know the facts of a particular employment dispute, it is unlikely that you will be able to walk away from trial without having experienced substantial surprises.

c. Your evaluation of facts, and your predictions of what should happen at trial, is burdened with a wide range of personal, financial, and business biases or predispositions that create significant doubt as to whether your evaluation of likely outcome will be a predictor for what a jury or judge might conclude.

44. So, again, the proper perspective in predicting outcome for purposes of evaluating risk is the perspective of the neutral finder of fact. Most lawyers and parties do a bad to horrible job of even trying to strip away their own biases to *try* to view the facts from the perspective of that neutral fact finder.

45. These evaluations, of what a judge or jury could conclude, should be made cognizant of the difference between disparate treatment claims (which require discriminatory intent by the employer) and disparate impact claims (which do not require discriminatory intent, but instead require a policy or practice which had a disproportionate impact on a protected group (such as older workers)). You need to look carefully at the allegations the

plaintiff is making to see if disparate impact claims are being asserted (there will almost always be disparate treatment claims).

H. Negative Effects of Litigation

46. Here is a far from complete list of negative aspects of defending an employment lawsuit:

a. Diverted (wasted) management time.

b. Litigation expense

i. Attorneys' fees and expenses for the employer.

ii. Expenses for employees involved in the litigation (testifying, meeting with counsel, etc.)

iii. The value of the lost time of your employees.

iv. If the employee prevails, the reasonable attorneys' fees and expenses incurred by the employee's lawyer.

c. Co-workers disrupted through litigation meetings, depositions, hearings, and trials

d. Gossip in the workplace about the litigation, including large amounts of inaccurate gossip

e. Negative effects on other employee's morale, and stirring up bad feelings amongst other employees Lawsuits frequent generate from co-workers a supportive attitude toward the former employee suing you.

f. Negative effects on the employer's reputation, internally, and outside the workplace.

g. Possible negative effects on recruiting.

h. Potential negative effects on business.

i. Lost employee time.

ii. Possible, discouraging certain customers from doing business with you.

i. Negative publicity with the media.

j. Damage awards from the jury or jury; settlements.

Prepared by:
Drew M. Capuder
Capuder Fantasia PLLC
Manchin Professional Building
1543 Fairmont Avenue, Suite 207
Fairmont, West Virginia
304-333-5261 (Voice)
304-367-1868 (Facsimile)
E-Mail: dcapuder@capuderfantasia.com
Web Page: www.capuderfantasia.com