

Justices for employment cases decided after January 1, 2009	Benjamin	Workman	McHugh	Davis	Ketchum
Political Party	Republican	Democrat	Democrat	Democrat	Democrat
Joined Court In	1/1/2005	1988-2000, 1/1/2009	1980-1997, 9/1/2008	1996	1/1/2009
<p><i>State ex rel. Clites v. Clawges</i>, -- W. Va. --, -- S.E.2d --, 2009 W.L. 3320488 (10/13/2009) (per curiam). Discussion on Drew Capuder's blog.</p> <p>Issues: Arbitration agreements (sexual harassment and retaliation under WV Human Rights Act)</p> <p>Ruling(s): (1) While the Federal Arbitration Act, 9 U.S.C. § 1 <i>et seq.</i>, preempts state laws which would undercut the enforceability of arbitration agreement, the issue of whether a particular arbitration agreement is a valid contract is a matter of state contract law capable of state court judicial review. (2) The arbitration agreement in issue was a contract of adhesion, but that does not, without more, mean the contract is unenforceable. (3) The arbitration agreement at issue was not unconscionable.</p> <p>Decision for: Employer; 5-0 (affirmed trial court's decision that arbitration agreement was binding and not unconscionable)</p> <p>Opinion(s) on WV SC site; on FindLaw site (per curiam)</p>					
<p><i>Erps v. West Virginia Human Rights Commission</i>, -- W. Va. --, 680 S.E.2d 371 (6/22/2009)</p> <p>Issues: Hostile work environment; retaliation (race discrimination case under WV Human Rights Act)</p> <p>Ruling(s): (1) For conduct allegedly creating hostile work environment, where the plaintiff "solicited, incited, or participated" in the offensive conduct, plaintiff must prove that (a) plaintiff informed co-workers and/or supervisors that future repetition of conduct would be unwelcome, and (b) conduct nevertheless continued. (2) Where plaintiff alleged he was terminated after complaining about discrimination, but plaintiff then refused to return to work until situation was addressed and employer then terminated plaintiff for refusing to return to work, plaintiff must prove evidence of pretext and prove that real reason for termination was complaint about discrimination.</p> <p>Decision for: Employer; 5-0 (mostly reversing decisions in favor of employee by WV Human Rights Commission)</p> <p>Opinion(s) on WV SC site; on FindLaw site</p>					
<p><i>Peters v. Rivers Edge Mining, Inc.</i>, -- W. Va. --, 680 S.E.2d 791 (6/4/2009)</p> <p>Issues: Future lost income; mitigation of damages; punitive damages (discrimination case based on worker's comp claim under WV Workers' Compensation Act)</p> <p>Ruling(s): (1) Affirmed front pay award (\$513,410) for 52 year old plaintiff through retirement age, (2) Malicious termination eliminates duty of plaintiff to mitigate damages; (3) punitive damage award (\$1m) was supported by the evidence (with detailed discussion of punitive damage standards in WV)</p> <p>Decision for Employee; 5-0 (affirming \$1.8m jury verdict for employee)</p> <p>Opinion(s) on WV SC site; on FindLaw site</p>					
<p><i>Little v. West Virginia Adjutant General</i>, 223 W. Va.. 790, 679 S.E.2d 622 (5/19/2009)</p> <p>Issues: Defense under West Virginia Human Rights Act</p> <p>Ruling(s): Statutory requirement that firefighter be member of Air National Guard was complete defense to firefighter's claim under Human Rights Act.</p> <p>Decision for Employer; 5-0</p> <p>Opinion(s) on WV SC site; on FindLaw site</p>					

