



# Intentional Misconduct Could Nullify Damages Limitations Clauses in Commercial Contracts

July 2009

For the first time, a federal judge in Virginia has ruled that contractual clauses that bar a party from recovering indirect, consequential or punitive damages, including lost profits, violate public policy and are not enforceable when a claim involves intentional misconduct.



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In *All Business Solutions, Inc. v. Nationsline, Inc.*, 2009 U.S. Dist. LEXIS 54693 (W.D. Va. June 29, 2009), the plaintiff asserted claims for breach of contract, statutory business conspiracy and misappropriation of trade secrets. The defendant, Nationsline, moved to dismiss the conspiracy and trade secrets claims argu-



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ing, in part, that those claims should be barred because of the contractual limitation on the recovery of damages. Nationsline asserted that the clause limited not only the damages recoverable, but the types of claims that could be filed against it. This was particularly important given that Virginia's business conspiracy statute allows a successful plaintiff to recover treble damages and attorneys' fees.

Commercial contracts frequently contain clauses that restrict the types of damages that can be recovered for disputes that arise out of the contractual relationship. And most parties to those contracts probably assume that they

mean what they say. That is no longer necessarily so.

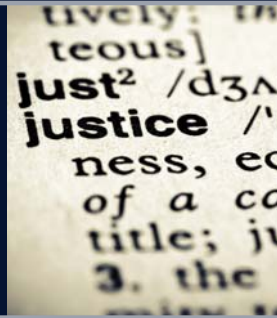
In *All Business Solutions*, the court noted that the specific issue of enforceability of such clauses had not been addressed by the Virginia Supreme Court. Nevertheless, Virginia courts do allow parties to contract to limit their risk of liability, so long as such clauses do not offend public policy. The federal court found that the majority of courts in other jurisdictions, including the District of Columbia, however, refuse to enforce clauses that limit damages for future intentional misconduct; such clauses are generally void because they violate public policy.

Based upon this precedent from other jurisdictions, the court opined that the Virginia Supreme Court would not enforce such a clause. Accordingly, it held that the clause was not enforceable and that All Business Solutions could proceed with its statutory business conspiracy claim against Nationsline.

This case is potentially significant to companies doing business in Virginia. Under this precedent, a business may not be able to hide behind a damages limitations clause when sued for an unfair business practice. And for the injured company, this case provides a vehicle to argue that it should be able to recover compensatory damages, including lost profits and punitive damages, in appropriate circumstances based upon intentional misconduct.

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