



Virginia Workplace Law

An Employer Wins – But Barely

By: Karen Elliott. *This was posted Tuesday, March 15th, 2011*

April Dodge viewed her employer's power point presentation explaining her new commission structure. She then successfully sold her employer's product. When the commissions she expected were absent, she sued her employer, CDW Government, Inc., claiming a breach of contract, based upon the power point presentation. While she convinced the lower court to rule in her favor, the employer appealed and just recently won a reversal. *Dodge v. CDW Government, Inc.* NO. 10-1406 [The court's opinion](#) is music to a management lawyer's ears – until the ending, which rings a cautionary note.

The court ruled that even though the employer provided a power point demonstration citing the new commission structure, the power point “did not amount to an offer to enter into a contract, but the announcement of a nonbinding intention.” That sounds like good news for the employer.

However, even though the court ruled that no contract was created – citing the company's handbook's ‘this is not a contract’ disclaimer — the court seemingly went out of its way to chide the employer and provide cautionary advice. The opinion notes that the employer's “failure to make good on its intention may hamper its efforts to attract and motivate sales managers.” More significantly, the court noted that the power point may give rise to a claim based on [quantum meruit](#).

In Virginia, a plaintiff who has no claim in contract may have an equitable claim under the quantum meruit theory – that is, one who benefits from the labor of another should not be unjustly enriched. Therefore, this employer appears to have “won” this round only because the employee failed to plead alternatively that she had an equitable claim. Due to the statute of limitations, this employer may indeed have won this battle.

However, employers should remember that just because what they offer to employees in their offer letters, handbooks, or power point presentations carries contract disclaimers – the employee may still prevail under alternate equitable theories. That is, the employer made a representation of what it was going to do, and should have followed through.

Note: This is an [unpublished opinion](#) which means it is not binding precedence in the Fourth Circuit.

If you need assistance in reviewing your offer letters, handbooks or other company policies, the [Virginia employment lawyers](#) at Sands Anderson would be pleased to assist you.

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