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August 31, 2018

Robert Fisher, Claim Manager
Board of Risk and Insurance Management
90 MacCorkle Avenue, SW, Suite 203
South Charleston, West Virginia 25303

Re: *McCoy et al. v. West Virginia Secretary of State*

Dear Mr. Fisher:

I am writing to express my extreme outrage and severe frustration in the recent handling of the above-referenced matters. This letter is to give you context while providing clear, written direction from the perspective of the Secretary of State.

The voters of this State spoke loud and clear in 2016 that they expected change. At the same time, I was informed repeatedly by county clerks, previous office holders, workers within the office, and others, that it would be best for me to exercise my option for "will and pleasure employees," and install competent people into the office. I have delivered on the direction West Virginia voters gave me via the ballot box including personnel changes necessitating the termination of several at-will employees.

My action precipitated a number of frivolous lawsuits by attorneys who ventured into the Capitol complex and used the previous Secretary of State's office space to solicit clients – a questionable practice from an ethical perspective. The main "cause of action" the plaintiffs' attorneys conjured up is a fictitious "firing for political reasons," a contention completely disconnected from reality.

My predecessor had already politicized the office, hiring an overwhelming number of employees registered as Democrat. I became aware of the employees' political affiliation only after the lawsuits were filed; in fact, it was when the plaintiffs' attorney described the cause of action that I first became aware of the employees' political registration. I want to be clear: plaintiffs' counsel is who made me aware of the dismissed employees' political affiliations. I never checked or had people from my office search for anyone's party registration.

Yet, because so many employees from the previous administration were Democrats, nearly anyone I removed would, of course, be Democrat. On the other side, given the fact that I had been on the Republican campaign trail literally from the day I arrived home from five years in

Afghanistan until I was elected, most every person I had the opportunity to observe in action and determine their demeanor and competency was either Republican, or had “Republican connections” – a description the Plaintiffs’ attorneys manufactured.

The plaintiff’s lawyers have confused – purposely so – correlation with causation.¹ They argue that since most of my new hires have Republican connections, that I did not retain their clients for political reasons. Let me be clear, nothing could be further from the truth. Not once, not ever, did I ask or find out anyone’s political affiliations – nor did I care. I didn’t ask about the political affiliations of people I fired, and I didn’t ask about the party affiliations of people I hired. Simply put, I hired based on competency and I terminated for lack of competency. Additionally, Plaintiffs’ attorneys’ definition of “Republican connection” is extraordinarily broad; nearly every person in the United States of America has a “Republican connection” under their definition.

Now, to get to the point of this letter, any settlement negates the concept of “at will” employment. Anything short of trying the cases on their merits is neither beneficial for the Office, nor the State. I have been and remain prepared to vigorously defend every one of these cases to conclusion, and I welcome my day in court to explain to a jury – and the people of West Virginia – why the Office is better with the new employees than it was with the previous employees.

However, the approach being taken needs to be turned upside down. The focus needs to be on trying these cases, not settling the cases.

These cases have been set for individual trial before five different Kanawha County Circuit Judges for more than a year. Those trial dates were to commence about a week ago and continue into early winter. Our first mediation occurred on August 21, 2018, and I was appalled at the approach taken by BRIM and AIG.

In fact, to say I was flabbergasted is an understatement. Given his tendencies, the assigned Adjuster could have been easily confused to be the attorney for the Plaintiff. His fear of going to trial clouded his advice to me and his decision-making. Without going into detail of the discussions, the settlement amounts he entertained from the Plaintiffs’ counsel were completely absurd. I considered immediately walking out of the mediation, but the Adjuster told me, “This is just part of the process. Don’t let the first numbers disturb you.”

Yet, after the first back and forth, the claims didn’t move in any significant fashion. At that point, I clearly stated my desire to “Go to court.” Yet, the Adjuster and Counsel informed me that it wasn’t really up to me, and that they would decide how to best limit risk. I disagreed vehemently with that assessment, and felt I owed it to the people of West Virginia to take the merits of the case to a jury; that is what trials are for.

To my dismay, the Adjuster and Counsel continued to negotiate. To express my total disgust with the way things were going, I left the mediation saying, “They are going to do what

¹ Of the twelve (12) lawsuits filed, at the time of their termination: nine (9) individuals were registered as Democrat; two (2) were registered independent; and one (1) was registered as a Republican.

they want to do, so there is no need for me to stick around.” I did not want to be associated with such a flawed process, nor give any credence to the outcome by my continued presence.

I learned the next day that the Adjuster settled two of the cases for grotesque amounts. This offended me as a taxpayer, as taxpayers pay the premiums for this insurance. More so, it insulted me as a statewide elected official responsible to the people of West Virginia for sound government.

Any settlement in these cases sets a terrible precedent in several ways; it tells bad employees if they are fired for any reason to bring frivolous lawsuits and drive up costs for the State – at a time taxpayers are fed up with overpriced couches. Settlement encourages unethical behavior and the filing of frivolous lawsuits by money-grubbing plaintiff’s attorneys at the expense of the tax-paying public. And, ludicrous settlements to inept employees who should have been terminated for cause long ago are detrimental to the morale of current hard-working, competent employees.

As soon as I heard of the shockingly absurd settlements, I immediately instructed my lawyer NOT to settle any further cases without my weighing in on the decisions. I specifically directed that I wanted to take the next case to trial. However, I learned yesterday that my direction was not heeded and the Adjuster unilaterally settled the specific case I insisted we take to trial. Then again today, I found out he settled a fourth case.

When I absolutely fumed how something like this can happen, I was reminded that the Adjuster doesn’t work for me – he works for the insurance company. I am sickened beyond belief that WE, on behalf of the State of West Virginia, are so afraid to allow our court system to function as designed, that we quickly shower a windfall to ineffectual employees and their shameful attorneys simply to avoid trial. I also find it appalling that there is no oversight by any elected official of the BRIM/AIG deliberations and settlement discussions. This is akin to there being no oversight of spending by the WV Supreme Court—a situation that will soon be addressed by voters in November. The current frivolous lawsuit/BRIM/AIG/settlement process is wrong and it is offensive, and begs for oversight!

As a result, I ask that my input as a Constitutional Officer of the State of West Virginia be given the weight to which it is entitled, and that we allow the judicial system to function as the arbiter of right and wrong. To the extent I can demand this, DO NOT AUTHORIZE THE SETTLEMENT OF ANY FURTHER CASES CONCERNING THIS OFFICE WITHOUT MY EXPRESS WRITTEN INPUT.

I look forward to hearing from you.

Sincerely,



MAC WARNER