254 No. 156

IN THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

Record No. 962531

ANDREW BRADICK,

Plaintiff/Appellant,

v.

NORTHROP GRUMMAN CORPORATION,

Defendant,

and

GRUMMAN DATA SYSTEMS CORPORATION,

Defendant/Appellee.

ON A QUESTION CERTIFIED TO THIS COURT
BY THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

John M. Bredehoft
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Counsel for Appellee
Grumman Data Systems
Corp.

TABLE OF CONTENTS

APPEAL CLOSED

U.S. District Court
Eastern District of Virginia (Alexandria)

CIVIL DOCKET FOR CASE #: 95-CV-620

Bradick v. Northrop Grumman Cor, et al
Assigned to: Judge Unassigned
Demand: $1,350,000
Lead Docket: None
Dkt# in other court: None

Filed: 05/11/95
Jury demand: Both
Nature of Suit: 442
Jurisdiction: Federal Question

Cause: 42:12101 Americans with Disability (Public Accomadations)

ANDREW BRADICK
plaintiff

John M. Bredehoft
[COR LD NTC]
Charlson & Bredehoft, P.C.
11260 Roger Bacon Drive
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Reston, VA 22090
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v.

NORTHROP GRUMMAN CORP.
defendant
[term 07/05/95]

James Joseph Kelley
[term 07/05/95]
[COR LD NTC]
Morgan, Lewis And Bockius
1800 M. Street
Washington, DC 20036
(202) 467-7095

GRUMMAN DATA SYSTEMS CORP.
defendant

James Joseph Kelley
(See above)
[COR LD NTC]

5/11/95	1	NOTICE OF REMOVAL from Circuit Court of Fairfax Co. by Northrop Grumman Cor, Grumman Data Systems (with State Court Pleadings - no answer filed by defts.); FILING FEE 120.00 RECEIPT # 104730; jury demand by pltf. in Fairfax Co. (pete)
5/18/95	2	ANSWER to Complaint by Northrop Grumman Cor, Grumman Data Systems (pete)
6/1/95	3	SCHEDULING ORDER setting Discovery cutoff 8/11/95 ; Pretrial Conference for 10:40 8/17/95 ; (signed by Judge James C. Cacheris) Copies Mailed: yes (mcke)
6/5/95	4	RESPONSE by Northrop Grumman Cor to Discovery Re: Pltf's first set of interrogatories (pete) [Entry date 06/06/95] [Edit date 06/06/95]
6/5/95	5	RESPONSE by Grumman Data Systems to Discovery Re: Pltf's first set of interrogatories (pete) [Entry date 06/06/95] [Edit date 06/06/95]
6/5/95	6	RESPONSE by Northrop Grumman Cor to Discovery Re: pltf's first request for production of documents (pete) [Entry date 06/06/95]
6/5/95	7	RESPONSE by Grumman Data Systems to Discovery Re: Pltf's first request for production of documents (pete) [Entry date 06/06/95]
6/6/95	8	NOTICE by Andrew Bradick to take deposition of Grumman Data Systems Corp. (pete)
6/6/95	9	NOTICE by Andrew Bradick to take deposition of Northrop Grumman Corp. (pete)
6/6/95	10	NOTICE by Andrew Bradick to take deposition of Richard Abbott (pete)
6/6/95	11	NOTICE by Andrew Bradick to take deposition of Martin Clark (pete)
6/6/95	12	NOTICE by Andrew Bradick to take deposition of Robert Doyle (pete)
6/6/95	13	NOTICE by Andrew Bradick to take deposition of William Eager (pete)
6/6/95	14	NOTICE by Andrew Bradick to take deposition of Richard Gregory (pete)
6/6/95	15	NOTICE by Andrew Bradick to take deposition of Sharon Rankin (pete)
6/6/95	16	NOTICE by Andrew Bradick to take deposition of James Roche

		(pete)
6/19/95	17	MOTION by Andrew Bradick to Compel discovery (ccur·
6/19/95	18	MEMORANDUM by Andrew Bradick in support of [17-1] motion by Andrew Bradick to Compel discovery by Andrew Bradick (ccur)
6/19/95	19	NOTICE of Hearing: Motion Hearing set for 10:00 6/23/95 for [17-1] motion by Andrew Bradick to Compel discovery (ccur)
6/23/95	20	MOTION by Grumman Data Systems for Judgment on the Pleadings (pete) [Entry date 06/26/95]
6/23/95	21	MEMORANDUM in support of [20-1] motion by Grumman Data Systems for Judgment on the Pleadings (pete) [Entry date 06/26/95]
6/23/95	22	NOTICE of Hearing: Motion Hearing set for 10:00 7/7/95 for [20-1] motion by Grumman Data Systems for Judgment on the Pleadings (pete) [Entry date 06/26/95]
6/26/95	23	MOTION by Grumman Data Systems for Protective Order (ccur)
6/26/95	24	MEMORANDUM by Grumman Data Systems in support of [23-1] motion by Grumman Data Systems for Protective Order by Grumman Data Systems (ccur)
6/26/95	25	NOTICE of Hearing: Motion Hearing set for 10:00 7/7/95 for [23-1] motion by Grumman Data Systems for Protective Order (ccur)
6/26/95	26	Deft. Grumman Data Systmes Corp.'s rule 30(b)(6) designation (ccur)
7/3/95	28	NOTICE by Grumman Data Systems to take deposition of Andrew Bradick (pete) [Entry date 07/05/95]
7/5/95	27	ORDER that upon stipulation of the parties, deft. Northrop Grumman Corp. is dismissed as a party to this action, with prejudice, and deft. Grumman Data Systems, Inc. shall be precluded from alleging at any stage of these proceedings that Grumman Data Systems, Inc. was not the pltf's employer or that Grumman Data Systems, Inc. or that Grumman Data Systems, Inc. is not the proper deft.. Each party shall bear its own fees and costs with respect to the matter herein. This cause is continued for further proceedings, ent - filed (signed by Judge James C. Cacheris) Copies Mailed: yes (pete)
7/5/95	29	MEMORANDUM by Andrew Bradick in opposition to [20-1] motion for Judgment on the Pleadings by Grumman Data Systems (rvoi)

7/6/95	--	Motions set for 7/7/95 - resolved (rvoi)
7/6/95	30	REPLY to opposition to motion for judgment on the pleadings - filed by deft (pete)
7/24/95	31	ORDER that Pltf appear for an Independent Medical Examination on 7/21/95 at the offices of Dr. Byron S. Cooper, said examination to be at the sole expense of Deft- ent.& filed (signed by Judge Claude M. Hilton) Copies Mailed: y (cser) [Entry date 07/25/95]
7/27/95	32	OBJECTION by defendant Grumman Data Systems to pltf's second set of requests for production of documents (pete) [Entry date 07/28/95]
7/27/95	33	OBJECTION by defendant Grumman Data Systems to pltf's second set of interrogatories (pete) [Entry date 07/28/95]
7/27/95	34	MEMORANDUM OPINION (signed by Judge Claude M. Hilton) Copies Mailed: yes (lhar) [Entry date 07/28/95]
7/27/95	35	ORDER, for reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED granting [20-1] motion by Grumman Data Systems for Judgment on the Pleadings in favor of the defendants and against the plaintiff and this case is dismissed - ent. & filed. (signed by Judge Claude M. Hilton) Copies Mailed: yes (lhar) [Entry date 07/28/95]
7/27/95	--	Case closed (lhar) [Entry date 07/28/95]
7/31/95	36	NOTICE by Grumman Data Systems to take deposition of Dr. Wesley Emmons 8/11/95 at 10:00 (psid)
8/23/95	37	NOTICE OF APPEAL of Order of 7/27/95 by Andrew Bradick . FILING FEE $ 105 RECEIPT # 105973 Copies Notice, Order, Docket and Transmittal sent to USCA and Andrew Bradick, Grumman Data Systems (jwil) [Entry date 08/30/95]

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

ANDREW BRADICK, 7133 Forest Wood Court McLean, Virginia 22101 Plaintiff, v. NORTHROP GRUMMAN CORP., Serve: Edward R. Parker 5511 Staples Mill Rd. Richmond, VA 23228 Registered Agent and GRUMMAN DATA SYSTEMS CORP., Serve: Edward R. Parker 5511 Staples Mill Rd. Richmond, VA 23228 Registered Agent Defendants.	)	At Law No. _____ .

MOTION FOR JUDGMENT

COMES NOW THE PLAINTIFF, ANDREW BRADICK, and moves this Court for the entry of judgment in his favor and against the Defendants, NORTHROP GRUMMAN CORP. and GRUMMAN DATA SYSTEMS CORP. (collectively, "Grumman"), and in support of such motion, alleges and avers as follows:

Nature of the Claim

1. This is an action at law arising out of the conduct of Grumman in the course of Grumman's employment of, and in the wrongful termination of, the Plaintiff Bradick.

2. This action states a common law claim against Grumman for wrongful termination of employment in violation of the public policy against discrimination in employment on the basis of disability.

3. The claim in this action arises generally out of Grumman's wrongful termination of Bradick because he is disabled and perceived to be disabled by Grumman.

PARTIES

4. Bradick is the former Director of International Business Development for Grumman.

5. Defendant NORTHROP GRUMMAN CORP. is a corporation, regularly conducting business in the County of Fairfax, Commonwealth of Virginia.

6. Defendant GRUMMAN DATA SYSTEMS CORP. is a corporation, regularly conducting business in the County of Fairfax, Commonwealth of Virginia.

7. Bradick was originally hired by Grumman Data Systems and Services, a division of Grumman Corporation. On information and belief, defendant GRUMMAN DATA SYSTEMS CORP. is an alter ego of Grumman Data Systems and Services division.

8. Defendant NORTHROP GRUMMAN CORP. is the successor to Grumman Corporation.

9. At the time of Bradick's termination, he was an employee of Grumman.

10. Bradick was employed in Grumman's office located in the County of Fairfax in the Commonwealth of Virginia.

11. Both defendants are subject to the personal jurisdiction of this Court.

12. Venue is proper in this Court.

Background

13. Bradick began his employment with Grumman on or about October 15, 1990.

14. At all times during his employment with Grumman, Bradick performed his work responsibilities in a satisfactory manner.

15. Effective on or about November 30, 1990, Bradick was appointed Director of International Business Development.

16. As Director of International Business Development, Bradick was responsible for winning new international business to increase the revenue and profits of Grumman by developing sales material that was appropriate for the international market place, identifying target countries and activities appropriate for Grumman, and bringing in multiple projects.

17. Upon accepting this appointment, Bradick began functioning under a five year plan, which called for him to bring in one minor program (worth less than

$1,000,000) in both years three and four of his employment and one major project (worth more than $10,000,000) in the fifth year of his employment.

Plaintiff's Superlative Job Performance

18. Bradick exceeded the goals set forth in the five year plan, both in terms of dollar value and in speed of attainment.

19. On January 25, 1991, Bradick was notified by an Inter Office Memorandum from Grumman Personnel Services that he would receive additional paid absence allowance as a key department director. The import of this memorandum was clarified in a Memorandum dated April 5, 1991, from Sharon Rankin, which stated that there would be no limit as to the amount of paid absence Bradick could receive.

20. On or about December 6, 1991, Bradick was selected to participate in the Key Employee Incentive Plan for 1992. This selection was based upon performance and carried with it a possible bonus, which would also be based upon merit.

21. In December of 1991, Bradick brought in a contract with the Korean National Police worth approximately $15.6 million, which constitutes a major contract under the five year plan. Such a major contract was not projected to occur for three more years.

22. In or around January of 1992, Grumman paid Bradick a Spot Bonus of $3,000 for winning a contract in Korea.

23. In or around March of 1992, Bradick received a Key Employee Bonus in the amount of $4,000. This award was based in part upon his performance.

24. On March 9, 1992, Bradick received a Performance Appraisal, which rated his performance as "Exceeds Expectations." In conjunction with this Performance Appraisal, Bradick received a merit pay increase, which went into effect in May of 1992.

25. In conjunction with his employment at Grumman during 1992, Bradick won a Licensing Agreement with Mitsubishi worth $100,000 per year. This contract qualified as a minor project, which was not slated to occur until the next year under the five year plan.

26. On or about December 10, 1992, Bradick was selected to participate in the Grumman Data Systems Key Employee Incentive Plan for 1993. His selection was merit based and he received a Key Employee Bonus in the amount of $5,800 in connection with this Plan.

27. On or about July 8, 1993, Bradick received a Performance Appraisal of "Exceeds Expectations" and received a merit pay increase effective January of 1994 in conjunction with this Performance Appraisal.

28. On or about December 9, 1993, Bradick was selected to participate in the Grumman Data Systems Key Employee Incentive Plan for 1994. His selection was merit based and he received a Key Employee Bonus in the amount of $5,600.

29. During his employment as Director of International Business Development, Bradick was responsible for the creation of several contracts, which totaled over $50 million in sales with a potential growth of upwards of $325 million. On information and belief, and with one exception, the contracts won through the work

of Bradick were the only important contracts won by the Grumman Data Systems division between 1990 and 1994. Every other "must win" bid at the Grumman Data Systems division during this time was lost by Grumman.

Plaintiff's Medical Condition

30. In or about January 1993, Bradick was diagnosed with histoplasmosis, which is a fungal infection of the lungs. This disease caused Bradick to suffer from extreme fatigue, which made travel difficult during acute attacks.

31. This illness constitutes a disability because the extreme fatigue caused by it interferes with major life functions.

32. Based upon advice from his treating physician, Bradick took a leave of absence on three different occasions to recuperate from this illness.

33. During the third leave of absence, which began on or about April 15, 1994, Grumman failed to honor its contract with Bradick by refusing to provide him with a paid leave of absence. Instead, Grumman falsely filed a workers compensation claim in connection with Bradick's illness.

34. Bradick did not contract this disease in connection with his employment by Grumman and did not consent in the filing of the workers' compensation claim. Instead, to the best of his knowledge and belief, Bradick acquired this disease while on vacation in Mexico.

35. On or about May 12, 1994, Bradick received a request from The Travelers, the company handling the workers' compensation claim, to sign several

blank medical authorization forms so that his medical condition could be reviewed. Bradick provided the necessary release.

36. Also in or around May of 1994, Bradick received a notice from Grumman that he would have to provide medical verification of his illness from his attending physician on or before June 9, 1994, or he would risk being suspended for failure to report to work. Bradick submitted the required forms to his physicians in accordance with his employer's instructions. Bradick sent verification to Grumman that he had complied with Grumman's request but also noted that his physician would be out of town until June 4, 1994.

Grumman's Continuing Attempts to Terminate Plaintiff

37. By letter dated May 24, 1994, sixteen days before he was required to submit his medical forms, Bradick received notification from Richard P. Gregory, Deputy Director of Administration, that due to a "Reduction in Force" and due to the fact that Bradick had failed to provide the requested medical verification, Bradick would be terminated on May 26, 1994.

38. Bradick received this notice on or about May 25, 1994, and immediately sent a facsimile message to Grumman asking for clarification, since he had not passed the deadline for providing the information and because his failure to provide the information earlier was solely due to his physician's travel plans.

39. On or about May 26, 1995, Bradick received a telephone call from Mr. Robert Doyle (Doyle), Senior Personnel Relations Representative of Grumman Corporation Operations, who advised him to disregard the termination notice.

40. On or about June 6, 1994, Bradick faxed the completed medical verification form to Grumman, per their instructions and three days prior to the deadline for submitting same.

41. On or about June 16, 1994, Doyle informed Bradick that he was trying to get Grumman to resume payments reflecting full pay to Bradick, as the company had during the two prior leaves of absence.

42. This commitment was short lived, as Doyle informed Bradick on or about June 22, 1994, that such payments were discretionary and would be discontinued.

43. Bradick began receiving partial payments for disability from The Travelers on or around June 29, 1994. Those payments stopped on or about July 18, 1994.

44. On or about July 13, 1994, Bradick spoke with Martin Clark, Director of Personnel at Grumman, and discussed Bradick's intention to return to part-time work after he recovered from his illness. Clark promised to ask about this possibility and get back to Bradick.

Bradick Returns To Work and is Fired

45. On or about July 19, 1994, Bradick was released by his physician to resume part-time work. Bradick conveyed this authorization to Grumman, but did not receive a reply as to his employment status.

46. On or about July 25, 1994, Bradick reported back to work at Grumman, but was instructed to report to Sharon Rankin. Rankin informed Bradick that he was terminated effective immediately due to a "reduction in force."

Bradick's Administrative Appeal

47. On or about August 22, 1994, Bradick submitted an internal administrative appeal of his termination, alleging that his termination had been discriminatory and based upon his disability. Bradick also sought back pay for the pay he did not receive during this third leave of absence, leave that should have been classified as paid leave.

48. Despite his appeal, Grumman affirmed Bradick's termination. Grumman did, however, honor Bradick's claim for back medical leave pay.

Grumman's Rational For Termination is Pretextual

49. Bradick was informed that he was terminated because Grumman Corporation had been taken over by defendant NORTHROP GRUMMAN CORP., and that NORTHROP GRUMMAN CORP. did not have any plans to continue the international business aspect of Grumman.

50. Grumman's professed reason for terminating Bradick was pretextual and a sham. In fact, Grumman was so anxious to terminate Bradick that they failed to follow their own Reduction-in-Force Procedure, which requires that "terminations are reviewed for placement within the Company."

52. Despite Grumman's assertion about its lack of continuing international plans, Grumman continued its international efforts, as witnessed by its new work in Australia, proposals to Canada and Kuwait, and business travel to other countries by Grumman personnel in which Grumman does not currently have contracts.

53. During Northrop's acquisition of Grumman, Dr. James Roche, Senior Vice President of Northrop, stated that Northrop was not interested in decreasing international business.

54. Grumman terminated Bradick because of his disability and because Grumman perceived Bradick to be disabled.

55. Despite his medical condition, Bradick was, and is, able to perform the essential functions of the employment position that he held with Grumman. This ability is readily apparent by the fact that Bradick won at least one major program worth $35 million while he battled this illness.

COUNT ONE
WRONGFUL TERMINATION OF EMPLOYMENT

56. The allegations of the foregoing paragraphs are incorporated as if realleged herein.

57. Defendants' termination of Bradick's employment violated the established public policies against discrimination in employment on the basis of disability.

58. The public policy against discrimination in employment on the basis of disability is articulated by the Commonwealth of Virginia, inter alia, in Article I, Section 1, of the Constitution of Virginia, which provides that among the "inherent rights" enjoyed by all persons are "the enjoyment of life and liberty, with the means of acquiring an possession property, and pursuing and obtaining happiness and safety."

59. The public policy against discrimination in employment on the basis of disability is articulated by the Commonwealth of Virginia, inter alia, in the Virginia Human Rights Act, Section 2.1-714 et seq. of the Code of Virginia, 1950, as amended, which provides that "[i]t is the policy of the Commonwealth of Virginia: 1. To safeguard all individuals within the Commonwealth from unlawful discrimination because of . . . disability . . . in places of . . . employment . . . ," and which defines unlawful discriminatory practices as "[c]onduct which violated any Virginia or federal statute or regulation government discrimination on the basis of . . . disability.:

60. The public policy against discrimination in employment on the basis of disability is articulated, inter alia, in the Virginians with Disabilities Act, Section 51.5-1 et seq., 1950 Code of Virginia, as amended, which provides that "[i]t is the policy of this Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the . . . economic life of the Commonwealth and to engage in remunerative employment," and that "[n]o employer shall discriminate in employment or promotion practices against an otherwise qualified person with a disability solely because of such disability."

61. Defendants are government contractors subject to the affirmative action requirements of the federal Rehabilitation Act of 1973. Accordingly, the exclusive remedy provisions of the Virginians With Disabilities Act do not apply to Bradick.

62. The public policy against discrimination in employment on he basis of disability is articulated, inter alia, in the Fairfax County Human Rights Ordinance, Chapter 11, Section 11-1-1 et seq. of the County Code of Fairfax, as amended, which provides that "it is . . . the policy of the County to ensure that all persons be afforded equal opportunity to participate, on the basis of personal merit, in the . . . economic, and other phases of community life free from any discrimination . . . ," and which further provides, "[i]t shall be unlawful for any employer on the basis of . . . disability . . .: (2) To discharge any employee. . . . "

63. The public policy against discrimination in employment on the basis of disability is articulated by the Congress of the United States in Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12001 et seq., and its implementing regulations.

64. Bradick's termination, and the events leading up to that termination, violated public policy and evidenced malice, spite, and ill will, and was willful and wanton, and evidenced a conscious disregard for the rights of Bradick.

65. As a direct and proximate result of this termination, Bradick has suffered, is suffering, and will in the future suffer, great damage, including loss of income, loss of employee benefits, lost career and business opportunities and advancement, litigation expenses including attorney's fees, embarrassment, humiliation, inconvenience, mental and emotional anguish and distress, physical injury and stress, and other injury.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, ANDREW BRADICK, requests that this Court enter judgment in his favor, and against the Defendants NORTHROP GRUMMAN CORP. and GRUMMAN DATA SYSTEMS CORP., and against each of them, on the above count, and further:

(a) Award Plaintiff compensatory damages of $1,000,000 on the above styled Count One; and in addition,

(b) Award Plaintiff punitive and exemplary damages of $350,000 on the above-stated Count One; and in addition,

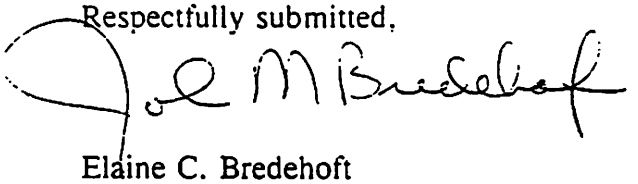
(c) Award Plaintiff his costs, fees, and such other relief as may be appropriate in the circumstances.

JURY DEMAND

PLAINTIFF ANDREW BRADICK DEMANDS A TRIAL BY JURY.

April 14, 1995

Respectfully submitted,



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Counsel for the Plaintiff
Andrew Bradick

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ANDREW BRADICK, 7133 Forest Wood Court McLean, Virginia 22101 Plaintiff, v. NORTHROP GRUMMAN CORP., 1840 Century Park East Los Angeles, CA 90067 and GRUMMAN DATA SYSTEMS CORP., 1111 Stewart Avenue Beth Page, N.Y. 11714 Defendants.	Civil Action No. _____

NOTICE OF REMOVAL

NOW COMES DEFENDANTS, Northrop Grumman Corporation ("Northrop Grumman") and Grumman Data Systems Corporation ("Grumman Data") and state as follows:

1. Plaintiff, Andrew Bradick, commenced this action against Defendants Northrop Grumman and Grumman Data on or about April 14, 1995, by filing a complaint in the Circuit Court for Fairfax County Virginia.

2. Defendants first received a copy of the Complaint on April 24, 1995.

3. Defendant Northrop Grumman is incorporated in the state of Delaware and its principle place of business is in the state of California.

4. The Defendant Grumman Data is incorporated in the state of Delaware and its principle place of business is in the state of New York.

5. It appears from the face of the Plaintiff's complaint that he is a citizen and resident of the Commonwealth of Virginia.

6. It appears from the face of the Plaintiff's complaint that the amount in controversy in this case, exclusive of interest and costs, is $1,350,000.

7. This Court, therefore, has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) and this action is removable under 28 U.S.C. § 1441(a).

8. It appears from the face of the Plaintiff's complaint that the Plaintiff is asserting a claim under the Americans With Disabilities Act, 42 U.S.C. § 12101 et. seq.

9. This Court has original jurisdiction over this matter under 28 U.S.C. § 1331 and this action, therefore, is removable under 28 U.S.C. § 1441(b).

10. A copy of all process, pleadings and orders served upon Defendants in this action is attached hereto as Exhibit A.

11. A copy of this Notice of Removal is being filed on this day with the Circuit Court for Fairfax County, Virginia pursuant to 28 U.S.C. § 1446(d).

12. A copy of this Notice of Removal is being provided to Mr. Bradick's attorneys on this date pursuant to 28 U.S.C. § 1446(d).

NOW THEREFORE, Defendants respectfully request that this matter be removed from the Circuit Court for Fairfax County Virginia to the United States District Court for the Eastern District of Virginia and that all proceedings here and after in this matter take place in the United States District Court for the Eastern District of Virginia.

Respectfully submitted,

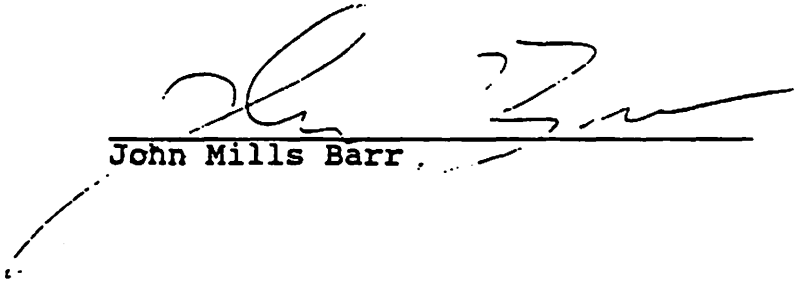
James J. Kelley
(VA Bar #013869)
John M. Barr
(VA Bar #029864)
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7095

CERTIFICATE OF SERVICE

I, John Mills Barr, do hereby certify that on this 11th day of May, 1995 a copy of the Defendants' Notice of Removal was served by hand on the following individuals:

The Honorable John T. Frey
Clerk, Commonwealth of Virginia
Circuit Court of Fairfax County
4110 Chain Bridge Road
Fairfax, VA 22030

Elaine C. Bredehoft, Esquire
Attorney for Plaintiff
11260 Roger Bacon Drive
Suite 201
Reston, VA 22090



John Mills Barr

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ANDREW BRADICK, 7133 Forest Wood Court McLean, Virginia 22101 Plaintiff, v. NORTHROP GRUMMAN CORP., 1840 Century Park East Los Angeles, CA 90067 and GRUMMAN DATA SYSTEMS CORP., 1111 Stewart Avenue Bethpage, N.Y. 11714 Defendants.	Civil Action No. 95-620-A

ANSWER TO MOTION FOR JUDGEMENT

COMES NOW Defendants Northrop Grumman Corporation ("Northrop Grumman") and Grumman Data Systems Corporation ("Grumman Data Systems"), by counsel, and for their Answer as to each enumerated paragraph of the Motion For Judgement ("Motion") filed by Plaintiff state as follows:

1. The Defendants deny all allegations contained in Paragraph 1 of the Motion.

2. Paragraph 2 of the Motion calls for a legal conclusion and thus does not require an answer from the

Defendants. To the extent that an answer is required, Defendants deny the allegations in Paragraph 2 of the Motion.

3. The Defendants deny all allegations in Paragraph 3 of the Motion.

4. The Defendants admit that the Plaintiff is the former Director of International Business Development for Grumman Data Systems. The Defendants deny all other allegations contained in Paragraph 4 of the Motion.

5. The Defendant Northrop Grumman admits that it is a corporation incorporated in the state of Delaware with its principle place of business in the state of California. The Defendant Northrop Grumman denies that it regularly conducts business in the County of Fairfax, Commonwealth of Virginia. Defendant Northrop Grumman admits that its subsidiary -- acquired in April 1994 -- Grumman Data Systems regularly conducts business in Fairfax County, Commonwealth of Virginia. The Defendants deny all other allegations contained in Paragraph 5 of the Motion.

6. The Defendant Grumman Data Systems admits that it is a corporation incorporated in the state of Delaware with its principle place of business in the state of New York. The Defendant Grumman Data Systems further admits that it regularly conducts business in the County of Fairfax, Commonwealth of Virginia. The Defendants deny all other allegations contained in Paragraph 6 of the Motion.

7. The Defendants admit that the Plaintiff was hired by Grumman Data Systems and Services which was a subsidiary of Grumman Corporation. Defendant Grumman Data Systems further admits that it is the same corporate entity as Grumman Data Systems and Services. The Defendants deny all other allegations contained in Paragraph 7 of the Motion.

8. The Defendant Northrop Grumman admits that it is the parent corporation of the Grumman Corporation. The Defendants deny all other allegations contained in Paragraph 8 of the Motion.

9. The Defendants admit that the Plaintiff was an employee of the Defendant Grumman Data Systems at the time of his termination. The Defendants deny all other allegations contained in Paragraph 9 of the Motion.

10. The Defendants admit that the Plaintiff was employed in Grumman Data Systems' office located in Fairfax County, Virginia. The Defendants deny all other allegations contained in Paragraph 10 of the Motion.

11. The Defendants aver that they are subject to the personal jurisdiction of this Court. The Defendants deny all other allegations contained in Paragraph 11 of the Motion.

12. The Defendants aver that venue is proper in this Court. The Defendants deny all other allegations contained in Paragraph 12 of the Motion.

13. The Defendants admit that the Plaintiff was employed by Grumman Data Systems and Services on October 22, 1990. The Defendants deny all other allegations contained in Paragraph 13 of the Motion.

14. The Defendants admit that the Plaintiff performed his work responsibilities in a generally satisfactory manner while employed at Grumman Data Systems. The Defendants deny all other allegations contained in Paragraph 14 of the Motion.

15. The Defendants admit that on or about November 30, 1990 the Plaintiff was appointed Director of International Business Development. The Defendants deny all other allegations contained in Paragraph 15 of the Motion.

16. The Defendants admit that as Director of International Business Development, Plaintiff was responsible for pursuing initiatives involving Grumman Data Systems in the international market. Defendants further admit that Plaintiff was responsible for the Grumman Data Systems Division interface with Grumman International Corporation, a wholly owned subsidiary of Grumman Corporation and for the coordination of international business activities involving other Grumman Divisions. The Defendants deny all other allegations contained in Paragraph 16 of the Motion.

17. The Defendants admit that the Plaintiff was appointed to his position as Director of International Business Development in furtherance of Grumman Data Systems' initiative to

emphasize securing international business. Defendants further admit that in the course of Plaintiff's employment, goals related to obtaining contracts of certain sizes were put forward to the Plaintiff. The Defendants deny all other allegations contained in Paragraph 17 of the Motion.

18. The Defendants deny all allegations contained in Paragraph 18 of the Motion.

19. The Defendants aver that the January 25, 1991 and April 5, 1991 memoranda identified by the Plaintiff in Paragraph 19 of the Motion are documents that speak for themselves. Defendants deny all other allegations contained in Paragraph 19 of the Motion.

20. The Defendants admit that on or about December 6, 1991 the Plaintiff was selected to participate in the Key Employee Incentive Plan for 1992. Defendants further admit that this selection was based in part on performance and made the plaintiff eligible for a bonus. The Defendants deny all other allegations contained in Paragraph 20 of the Motion.

21. The Defendants deny all allegations contained in Paragraph 21 of the Motion.

22. The Defendants admit that on or around January of 1992 Grumman Data Systems paid the Plaintiff a bonus of approximately $3,000 for participating in the acquisition of the Korean contract identified in Paragraph 22 of the Motion.

Defendants deny all other allegations contained in Paragraph 22 of the Motion.

23. The Defendants admit that on or around March of 1992 the Plaintiff received a bonus of approximately $4,000 which was based in large part upon the performance of the entire Grumman Data Systems division. Defendants deny all other allegations contained in Paragraph 23 of the Motion.

24. The Defendants aver that the Plaintiff's March 9, 1992 Performance Appraisal identified in Paragraph 24 of the Motion is a document that speaks for itself. The Defendants admit that the Plaintiff received a merit pay increase that went into effect in May of 1992. The Defendants deny all other allegations contained in Paragraph 24 of the Motion.

25. The Defendants admit that in 1992 the Plaintiff was one of the individuals who played a role in the acquisition of a Licensing Agreement with Mitsubishi worth approximately $100,000 for Grumman Data Systems. Defendants aver that this contract was only continued -- at a lesser amount -- for one additional year and then discontinued. Defendants deny all other allegations contained in Paragraph 25 of the Motion.

26. The Defendants admit that on or around December 10, 1992 the Plaintiff was selected to participate in Grumman Data Systems' Key Employee Incentive Plan for 1993. Defendants further admit that the Plaintiff received a bonus of

approximately $5,800 as part of this plan. The Defendants deny all other allegations contained in Paragraph 26 of the Motion.

27. The Defendants aver that the Plaintiff's July 8, 1993 Performance Appraisal identified in Paragraph 27 of the Motion is a document which speaks for itself. The Defendants admit that the Plaintiff received a pay increase effective January of 1994 in conjunction with this Performance Appraisal. The Defendants deny all other allegations contained in Paragraph 27 of the Motion.

28. The Defendants admit that on or about December 9, 1993 the Plaintiff was selected to participate in the Key Employee Incentive Plan for 1994. The Defendants further admit that the Plaintiff received a bonus of approximately $5,600 for 1994 in connection with this plan. The Defendants deny all other allegations contained in Paragraph 28 of the Motion.

29. The Defendants deny all allegations contained in Paragraph 29 of the Motion.

30. The Defendants are without information or knowledge sufficient to either affirm or deny the allegations contained in Paragraph 30 of the Motion.

31. Paragraph 31 of the Motion calls for a legal conclusion and as such does not require that the Defendants either affirm or deny the allegation that histoplasmosis constitutes a disability. The Defendants deny all other allegations contained in Paragraph 31 of the Motion.

32. Defendants admit that Plaintiff took three separate medical leaves of absence in 1993 and 1994, but are without information or knowledge sufficient to either affirm or deny the allegation that the Plaintiff took the leaves on the advice of his physician. Defendants deny all other allegations contained in Paragraph 32 of the Motion.

33. The Defendants admit that on April 15, 1994 the Plaintiff was given two weeks advance notice of his termination. The Defendants further admit that three days later the Plaintiff notified Grumman Data Systems that he would be absent from work due to a doctor's appointment. The Defendants deny all other allegations contained in Paragraph 33 of the Motion.

34. The Defendants are without knowledge or information sufficient to either affirm or deny the allegations contained in Paragraph 34 of the Motion.

35. The Defendants are without knowledge or information sufficient to either affirm or deny the allegations contained in Paragraph 35 of the Motion.

36. The Defendants aver that the documents identified in Paragraph 36 of the Motion speak for themselves. The Defendants are without information or knowledge sufficient to either affirm or deny whether the Plaintiff submitted required forms to his physician. The Defendants deny all other allegations contained in Paragraph 36 of the Motion.

37. The Defendants aver that the May 24, 1994 letter identified in Paragraph 37 of the Motion is a document which speaks for itself. The Defendants deny all other allegations contained in Paragraph 37 of the Motion.

38. The Defendants are without information or knowledge sufficient to either affirm or deny when the Plaintiff received the May 24, 1994 letter referred to in Paragraph 37 of the Motion or why the Plaintiff had thus far been unable to provide the necessary information. The Defendants aver that the facsimile message referred to in Paragraph 38 of the Motion is a document which speaks for itself. The Defendants deny all other allegations contained in Paragraph 38 of the Motion.

39. The Defendants admit that Mr. Robert Doyle telephoned the Plaintiff and advised him to disregard the May 1994 termination notice. The Defendants deny all other allegations contained in Paragraph 39 of the Motion.

40. The Defendants aver that the completed medical verification form identified in Paragraph 40 of the Motion is a document which speaks for itself. The Defendants deny all other allegations contained in Paragraph 40 of the Motion.

41. The Defendants admit that Grumman Data Systems paid the Plaintiff for the two medical leaves of absence he took prior to April 1994. The Defendants deny all other allegations in Paragraph 41 of the Motion.

42. The Defendants admit that on or about June 22, 1994 Robert Doyle informed the Plaintiff that medical leave payments were discretionary and that his would be discontinued. The Defendants deny all other allegations contained in Paragraph 42 of the Motion.

43. The Defendants admit that the Plaintiff began receiving disability payments from the Traveller's Insurance Company in late June 1994. The Defendants further admit that Travellers ended these payments in or about mid-July 1994. Defendants deny all other allegations contained in Paragraph 43 of the Motion.

44. The Defendants deny the allegations contained in Paragraph 44 of the Motion.

45. The Defendants are without information or knowledge sufficient to either affirm or deny when the Plaintiff was released for work by his physician. The Defendants aver that the authorization identified in Paragraph 45 of the Motion is a document which speaks for itself. The Defendants admit that Grumman Data Systems informed the Plaintiff of his termination on July 25, 1994. The Defendants deny all other allegations contained in Paragraph 45 of the Motion.

46. The Defendants admit that on July 25, 1994 the Plaintiff returned to work at Grumman Data Systems and was directed to report to Sharon Rankin. The Defendants further admit that at this time the Plaintiff was informed of his

termination due to a reduction in force. The Defendants deny all other allegations contained in Paragraph 46 of the Motion.

47. The Defendants admit that on or about August 22, 1994 the Plaintiff submitted an internal administrative appeal regarding his termination alleging that his termination had been discriminatory and based upon his disability. The Defendants further admit that the Plaintiff sought backpay for his third leave of absence. The Defendants deny all other allegations contained in Paragraph 47 of the Motion.

48. The Defendants admit that the Plaintiff's termination was upheld but that the Plaintiff was granted pay for his third medical leave. The Defendants deny all other allegations contained in Paragraph 48 of the Motion.

49. The Defendants admit that the Plaintiff was informed that he was terminated because Grumman Data Systems did not intend to continue the international business plan undertaken when the Plaintiff was hired. The Defendants deny all other allegations contained in Paragraph 49 of the Motion.

50. The Defendants deny the allegations contained in Paragraph 50 of the Motion.

51. [Sic.]

52. The Defendants admit that Grumman Data Systems continues to perform some international business. The Defendants further admit that Grumman Data Systems is a subcontractor for work in Kuwait and Australia and that it has explored business

opportunities in other countries such as Canada. The Defendants deny all other allegations contained in Paragraph 52 of the Motion.

53. The Defendants admit that during Northrop Corporation's acquisition of Grumman Corporation Dr. James Roche stated that he did not see any reason to diminish Grumman Corporation's international business. The Defendants aver that Dr. Roche's statement regarding policy towards the entire Grumman Company is irrelevant to the termination of a single individual employed in a Grumman subsidiary. The Defendants deny all other allegations contained in Paragraph 53 of the Motion.

54. The Defendants deny all allegations contained in Paragraph 54 of the Motion.

55. The Defendants are without knowledge or information sufficient to either affirm or deny whether the Plaintiff was or is able to perform the essential functions of the position he held with Grumman Data Systems. The Defendants deny all other allegations contained in Paragraph 55 of the Motion.

COUNT I

WRONGFUL TERMINATION OF EMPLOYMENT

56. The responses to the foregoing paragraphs are incorporated as if the allegations were realleged herein.

57. The Defendants deny all allegations contained in Paragraph 57 of the Motion.

58. The Defendants aver that Article I, Section 1 of the Constitution of Virginia is a document which speaks for itself. The Defendants further aver that the existence of a public policy against discrimination on the basis of disability in the Commonwealth of Virginia is a legal conclusion which does not require an answer from the Defendants. The Defendants deny all other allegations contained in Paragraph 58 of the Motion.

59. The Defendants aver that Section 2.1-714 et seq. of the Code of Virginia, 1950, as amended, is a document which speaks for itself. The Defendants further aver that the existence of a public policy against discrimination on the basis of disability in the Commonwealth of Virginia is a legal conclusion which does not require an answer. The Defendants deny all other allegations contained in Paragraph 59 of the Motion.

60. The Defendants aver that Section 51.5-1 et seq., 1950, as amended, Code of Virginia is a document which speaks for itself. The Defendants further aver that the existence of a public policy in the Commonwealth of Virginia against discrimination on the basis of disability is a legal conclusion that does not require an answer. The Defendants deny all other allegations contained in Paragraph 60 of the Motion.

61. The Defendants admit that they are government contractors. The Defendants aver that the questions of whether

they are subject to the affirmative action requirements of the Federal Rehabilitation Act of 1973 and whether the exclusive remedy provisions of the Virginians With Disabilities Act apply to the Plaintiff are legal conclusions which do not require an answer. The Defendants deny all other allegations contained in Paragraph 61 of the Motion.

62. The Defendants aver that Chapter 11, Section 11-1-1 et seq. of the County Code of Fairfax, as amended, is a document which speaks for itself. The Defendants further aver that the existence of a public policy in the Commonwealth of Virginia against discrimination in employment on the basis of disability is a legal conclusion which does not require an answer. The Defendants deny all other allegations contained in Paragraph 62 of the Motion.

63. The Defendants aver that the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12001 et seq. and its implementing regulations are documents which speak for themselves. The Defendants further aver that the existence of a public policy against discrimination in employment on the basis of disability in the Commonwealth of Virginia is a legal question which does not require an answer. The Defendants deny all other allegations contained in Paragraph 63 of the Motion.

64. The Defendants deny all allegations contained in Paragraph 64 of the Motion.

65. The Defendants are without information or knowledge sufficient to either affirm or deny the allegations contained in Paragraph 65 of the Motion.

WHEREFORE, Defendants deny that they are liable to the Plaintiff Andrew Bradick for any amount whatsoever.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Motion fails to state a claim against the Defendants upon relief can be granted.

Second Affirmative Defense

The Plaintiff has failed to mitigate his damages.

Third Affirmative Defense

Public Policy in the Commonwealth of Virginia is to have all claims of discrimination on the basis of a disability against United States Government contractors to be decided under federal law.

Fourth Affirmative Defense

The Plaintiff has no claim against Northrop Grumman or Grumman Corporation as neither company was the Plaintiff's employer.

Fifth Affirmative Defense

The Plaintiff was released pursuant to a legitimate Reduction In Force and not on the basis of any disability.

Sixth Affirmative Defense

The Plaintiff failed to exhaust the statutorily mandated administrative procedures prior to the initiation of his complaint.

Respectfully submitted,

James J. Kelley
(VA Bar #013869)
John M. Barr
(VA Bar #029864)
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1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7095

Attorneys for
Northrop Grumman Corporation
and Grumman Data Systems
Corporation

Dated: May 18, 1995

CERTIFICATE OF SERVICE

I, John Mills Barr, do hereby certify that on this __ day of May, 1995 a copy of the Defendants' Answer to Motion for Judgement was served by hand on the following individual:

Elaine C. Bredehoft, Esquire
Attorney for Plaintiff
11260 Roger Bacon Drive
Suite 201
Reston, VA 22090

_____
John Mills Barr

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ANDREW BRADICK, Plaintiff, v. NORTHROP GRUMMAN CORP, et al., Defendants.	Case No. 95-620-A

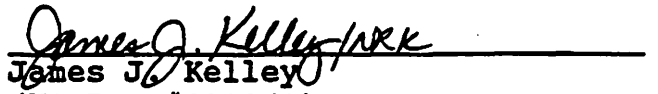
DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, Defendant, Grumman Data Systems Corporation ("Grumman"), by and through its undersigned counsel, hereby moves this Court for judgment on the pleadings and to dismiss this action because the Complaint fails to state a claim for which relief can be granted.[1]

[1] The parties have agreed to dismiss Defendant, Northrop Grumman Corporation, from this case by Stipulation to be filed shortly with the Court. This motion, therefore, is limited to the remaining Defendant, Grumman Data Systems Corporation.

The grounds for Defendant's motion are set forth in greater detail in the accompanying Memorandum of Points and Authorities.

Respectfully submitted,



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Attorneys for Defendant,
Grumman Data
Systems Corporation

OF COUNSEL:
Morgan, Lewis & Bockius
1800 M Street N.W.
Suite 800 North
Washington D.C. 20036

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ANDREW BRADICK, Plaintiff, v. NORTHROP GRUMMAN CORP., et al., Defendant.	Civil Action No. 95-620-A

STIPULATION AND ORDER OF DISMISSAL
WITH RESPECT TO DEFENDANT NORTHROP GRUMMAN CORP.

IT APPEARING to this Court that the parties have agreed, as confirmed by the signature of their counsel hereto, to dismiss defendant NORTHROP GRUMMAN CORP. from these proceedings pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure; and it further

APPEARING that defendant GRUMMAN DATA SYSTEMS, INC., has stipulated, as confirmed by the signature of its counsel hereto, that GRUMMAN DATA SYSTEMS, INC., that it is the proper defendant to this action and that GRUMMAN DATA SYSTEMS, INC., is the sole entity that would be liable for any and all of the damages alleged in the Motion for Judgment filed herein, should some damages be assessed; it is hereby

ORDERED that defendant NORTHROP GRUMMAN CORP. shall be, and hereby is, DISMISSED as a party to this action, with prejudice; and it further

ORDERED that defendant GRUMMAN DATA SYSTEMS, INC., shall be precluded from alleging at any stage of these proceedings that

GRUMMAN DATA SYSTEMS, INC., was not the plaintiff's employer or that GRUMMAN DATA SYSTEMS, INC., is not the proper defendant; and it is further

ORDERED that each party shall bear its own fees and costs with respect to the matter herein; and it is further

ORDERED that this cause is continued for further proceedings.

July 5, 1995
Alexandria, Virginia

United States District Court Judge

SO STIPULATED:

CHARLSON & BREDEHOFT, P.C.

By: _____
John M. Bredehoft
Virginia Bar No. 33602
Tracey S. Brinkman
Virginia Bar No. 36951
11260 Roger Bacon Drive
Suite 201
Reston, Virginia 22090
(703) 318-6800

Counsel for Plaintiff
Andrew Bradick

SO STIPULATED:

MORGAN, LEWIS & BOCKIUS

By: _____

James J. Kelly
Virginia Bar No. 13569
John M. Barr
Virginia Bar No. 29574
1800 M Street, N.W.
Washington, D.C. 20036
(202) 467-7000

Counsel for all Defendants
Northrop Grumman Corp.
Grumman Data Systems, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

ANDREW BRADICK,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 95-620-A
NORTHROP GRUMMAN CORP. and GRUMMAN DATA SYSTEMS CORP.,	)	
Defendants.	)	

MEMORANDUM OPINION

Plaintiff filed this action in Fairfax County Circuit Court on April 18, 1995, alleging discriminatory termination from employment based on an alleged physical disability. On May 11, 1995, defendants, Grumman Data Systems Corporation ("Grumman") and Northrop Grumman Corporation ("Northrop"), removed the case to this Court. Defendants now move for judgment on the pleading for plaintiff's failure to state a claim under any exception to Virginia's employment-at-will doctrine. For the reasons set forth below, this Court concludes that plaintiff fails to state a claim and this complaint should be dismissed.

The plaintiff was hired by Grumman in October of 1990. He was subsequently appointed to the position of Director of International Business. In January of 1993, he was diagnosed as having histoplasmosis, a fungal infection of the lungs which causes extreme fatigue. On or about July 25, 1994, following plaintiff's return from a leave of absence, he was notified that, effective

immediately, he was being terminated due to a reduction in force.

Grumman is a government contractor, subject to the requirements of the Rehabilitation Act of 1973. The plaintiff has failed to file any claim for relief as afforded by applicable federal or state statute or local ordinance, such as, a charge of discrimination with the Equal Employment Opportunity Commission, a claim with the United States Department of Labor under the Rehabilitation Act, or a discrimination complaint under the Virginia Human Rights Act. Thus, plaintiff is now before this Court solely on the basis of his state common law claim of wrongful termination in violation of public policy against disability discrimination.

Rule 12(c) of the Federal Rules of Civil Procedure provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed.R.Civ.P. 12(c). "In considering a motion for judgment on the pleadings, the trial court is required to view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party." 5A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1368 (1990).

Plaintiff's complaint consists of one count for wrongful termination of employment. He alleges that his termination violated established public policies against discrimination on the basis of disability. Plaintiff argues that as the defendants are subject to the Rehabilitation Act of 1973, the exclusive remedy provisions of the Virginians With Disabilities Act ("VDA") do not

apply. However, in Virginia plaintiff's exclusive remedy for disability discrimination is under the VDA.

In Virginia, an employer is free to terminate an employee at will with certain narrow exceptions. See, Lockhart v. Commonwealth Education Systems, 439 S.E.2d 328 (1994); Bowman v. State Bank of Keysville, 229 Va. 534 (1985).

In Bank of Keysville, 331 S.E.2d 797, the Virginia Supreme court recognized a state common law wrongful discharge action for discharge in violation of the strong public policy of Virginia. Plaintiffs, employees who owned several shares of the bank's common stock, were told they would be terminated if they did not vote their shares in favor of a merger. Plaintiffs voted in favor of the merger, later withdrawing their proxies as invalid, and were subsequently terminated. Va. Code § 13.1-32 gave plaintiffs the right to vote their stock free of duress and intimidation. Id. at 801. The court held that because the right to vote stock freely is one conferred by statute and in furtherance of public policy, the employer violates public policy by using discharge as a threat to control the decision of the stockholder. Id. Applying a narrow exception to the employment-at-will doctrine, the court concluded that plaintiffs had stated a cause of action for improper discharge. Id.

In Lockhart v. Commonwealth Educ. Systems Corp., 439 S.E.2d 328, the plaintiffs alleged discharge as a result of race and gender. The court noted that Va. Code § 2.1-715, the Virginia Human Rights Act, provided Virginia's strong public policy against

discrimination based upon race or gender. Id. at 331.

The Lockhart court rejected defendant's argument that because Ms. Lockhart had adequate federal statutory remedies, she had no state remedy as her action did not fall under the Bowman exception. Id. at 332. The court noted that one set of facts may give rise to a common law tort remedy as well as a federal statutory remedy. Id.

These are the exceptions to Virginia's employment-at-will doctrine. Plaintiff would have this Court expand the exceptions to include a cause of action for wrongful termination for discrimination based on disability.

Plaintiff contends that Lockhart is dispositive and that the existence of a statutory remedy does not bar his common-law claims[1]. However, the Lockhart court specifically stated that the Virginia Human Rights act does not create a private cause of action. Rather, they relied "solely on the narrow exception . . . recognized . . . in Bowman." Lockhart, 439 S.E.2d at 331. While there may be a remedy under the VDA, plaintiff argues that he also has a state common law cause of action for wrongful termination in violation of public policy. Plaintiff asserts that Virginia's public policy against disability discrimination is embodied in the Virginians With Disabilities Act ("VDA"), the Virginia Human Rights Act ("VHRA"), the Fairfax County Human Rights Ordinance, the

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[1] Plaintiff cites cases from other Oklahoma. Oregon, and Michigan to support his proposition that a common law cause of action is not barred.

Virginia Constitution and the Americans with Disabilities Act ("ADA").

However, as is clearly set forth in Mannell v. American Tobacco Co., 871 F.Supp. 854 (E.D.Va. 1994), it is the VDA which embodies Virginia's public policy against disability discrimination and it is the exclusive state remedy available to a party alleging employment discrimination on the basis of disability. Id. at 862. The VDA, Va. Code § 51.5-46(C), provides that "[t]he relief available for violations of this chapter shall be limited to the relief set forth in this section."

Lockhart can be distinguished. "In Lockhart, the Virginia Supreme Court rejected the defendant's argument that the plaintiff could not maintain a state common law wrongful discharge action because she had adequate remedies under federal law." American Tobacco Co., 871 F.Supp. at 862 (emphasis in original), and there were no state statutory remedies available. Here, as in Mannell, the issue is not whether there are federal statutory remedies available but that there are state statutory remedies under VDA which are the sole state law remedies.

Plaintiff argues that the VDA does not apply as the defendant, a general contractor, was not covered by the VDA. While the VDA does not cover employees "covered by the Federal Rehabilitation Act of 1973", Va. Code Ann. § 51.5-41(F), this does not save plaintiff's wrongful discharge claim. As stated in Mannell:

> the VDA's explicit statement that it does not apply to employees covered by the Rehabilitation Act indicates that the General Assembly did not intend employees who could proceed against their employers under the Rehabilitation Act to be able to proceed under the VDA, which is the exclusive state remedy.

Id. at 862.

The statement of Virginia's public policy against disability discrimination is contained in the VDA and the Virginia General Assembly indicated that the VDA would provide the exclusive state remedy for employment discrimination based on disability. Id. at 862.

Plaintiff's reliance on the Virginia Human Rights Act ("VHRA"), the Fairfax County Human Rights Ordinance, the Virginia Constitution and the Americans with Disabilities Act ("ADA") is misplaced. Virginia has clearly expressed that all remedies for disability discrimination are embodied in the VDA and it is clear that the only exceptions to Virginia's employment-at-will doctrine are created by Bank of Keysville and Lockhart, and disability discrimination is not one of those exceptions.

An appropriate order shall issue.

Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
July 27, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

ANDREW BRADICK,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 95-620-A
NORTHROP GRUMMAN CORP. and GRUMMAN DATA SYSTEMS CORP.,	)	
Defendants.	)	

ORDER

This matter came before the Court on defendants' motion for judgment on the pleadings. For reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that defendants' motion for judgment on the pleadings is GRANTED in favor of the defendants and against the plaintiff and this case is dismissed.

Claude M. Hilton
UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
July 27, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

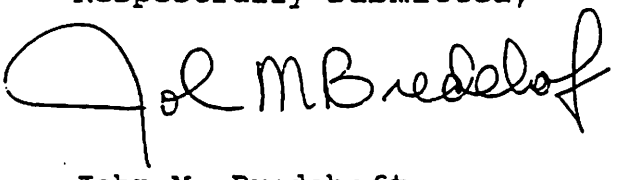
ANDREW BRADICK, Plaintiff, v. NORTHROP GRUMMAN CORP., et al., Defendants.	Civil Action No. 95-620-A

NOTICE OF APPEAL

Please take notice that the Plaintiff, Andrew Bradick, hereby appeals to the United States Court of Appeals for the Fourth Circuit from this Court's Order entered July 27, 1995.

August 23, 1995

Respectfully submitted,



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(703) 318-6800

Counsel for Plaintiff
Andrew Bradick

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing NOTICE OF APPEAL this 23rd day of August, 1995, by causing a copy thereof to be sent by first class mail, postage pre-paid to counsel for defendant addressed as follows:

James J. Kelly, Esq.
John M. Barr, Esq.
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

John M. Bredehoft

FILED December 16, 1996

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-2636

ANDREW BRADICK,

Plaintiff - Appellant,

versus

GRUMMAN DATA SYSTEMS CORPORATION,

Defendant - Appellee,

and

NORTHROP GRUMMAN CORPORATION,

Defendant.

ORDER OF CERTIFICATION TO THE

SUPREME COURT OF VIRGINIA

This appeal from the United States District Court for the Eastern District of Virginia is pending before us, the judges of the United States Court of Appeals for the Fourth Circuit. We certify that a question of Virginia law is determinative in this proceeding, and it appears to us that there is no controlling precedent on point in the decisions of the Supreme Court or the Court of Appeals of Virginia. Therefore, pursuant to Rule 5:42 of the Rules of the Supreme Court of Virginia, we request that the Supreme Court of Virginia exercise its discretion to answer the question of Virginia law set forth in this order.

I. The Nature of the Controversy In Which The Question Arises

Andrew Bradick filed a motion for judgment in the Circuit Court for Fairfax County, Virginia. He alleged that the defendants, Northrop Grumman Corporation and Grumman Data Systems Corporation, were formerly his employer, and that the defendants had wrongfully discharged him from employment in violation of the common law of Virginia. The defendants removed the case to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1441(a), the District Court having original jurisdiction under 28 U.S.C. § 1332(a). Defendant Northrop Grumman was dismissed by stipulation of the parties. Grumman Data Systems answered the complaint and moved for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). The district court granted Grumman Data Systems' motion. Bradick noted a timely appeal to this court, and we have jurisdiction under 28 U.S.C. § 1291.

II. The Question of Law To Be Answered

Does the common law of Virginia provide a wrongful discharge remedy to an employee of an employer covered by the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., where the employee is discharged on account of his disability or the employer's perception of his disability?

III. Statement of All Facts Relevant To The Question Certified

1. Bradick was an employee of Grumman Data Systems from 1990 until May 26, 1994.

2. The relevant aspects of the employment relationship between Bradick and Grumman Data Systems were governed by Virginia law.

3. Bradick's job performance was satisfactory to Grumman Data Systems.

4. In 1993, during a vacation to Mexico, Bradick contracted a severe case of histoplasmosis. This disease causes him to have recurrent attacks of extreme fatigue. His treating physician recommended that he take leaves of absence from his employment with Grumman Data Systems on three occasions.

5. Bradick's discharge occurred during the third of these leaves of absence. He alleges that the discharge was based on physical disability or Grumman Data Systems' perception that he suffers from a physical disability. He further alleges that he was and is able to adequately perform his former job.

6. Grumman Data Systems is an employer covered by the Rehabilitation Act of 1973.

7. All relevant events occurred before the 1995 amendments to Va. Code § 2.1-725.

IV. The Names of The Parties

1. The appellant, plaintiff below, is Andrew Bradick, a natural person and a citizen of Virginia.

2. The appellee, defendant below, is Grumman Data Systems Corporation, a corporation organized under the laws of the state of Delaware with its principal place of business in the state of New York.

V. Counsel for The Parties

1. Counsel of Record for Bradick are John M. Bredehoft and Elaine C. Bredehoft, of Charlson & Bredehoft, P.C., 11260 Roger Bacon Drive, Suite 201, Reston, Virginia 22090. Tel.# (703) 318-6800.

2. Counsel of Record for Grumman Data Systems Corp. are James J. Kelley and Nancy R. Kuhn, of Morgan, Lewis & Bockius LLP, 1800 M Street N.W., Washington, D.C. 20036. Tel.# (202) 467-7095.

VI. How The Certified Question Is Determinative of The Proceeding In This Court

An affirmative answer to the certified question will require us to reverse the judgment of the district court and remand for further proceedings. A negative answer will compel us to affirm the judgment of the district court.

VII. Relevant Decisions of The Supreme Court and Court of Appeals of Virginia

We believe that the most relevant decision of the Supreme Court of Virginia is Lockhart v. Commonwealth Education Systems Corp., 247 Va. 98, 439 S.E.2d 328 (1994). In Lockhart, the court held that the Virginia Human Rights Act (VHRA), Va. Code § 2.1-715, establishes a "public policy" against race or gender discrimination for purposes of the common-law public policy exception to employment-at-will, notwithstanding that VHRA does not itself create a private right of action. Although VHRA also prohibits discrimination on account of disability, and the amendment of § 2.1-725 apparently prompted by Lockhart postdates the discharge at

issue here, we are uncertain that Lockhart controls, for three reasons:

First, it may be that, from the standpoint of the common law exception, race and gender discrimination violate public policy to a greater degree than does disability discrimination.

Second, the Virginians with Disabilities Act (VDA), Va. Code §§ 51.5-40 - 51.5-46, creates a comprehensive administrative procedure to combat discrimination on account of disability, and § 51.5-46(C) states, "[t]he relief available for violations of this chapter shall be limited to the relief set forth in this section." It may be that this statute abolishes any remedy the common law may have afforded.

Third, even if VDA does displace the common law remedy, the substantive section of VDA that prohibits employment discrimination based on disability "shall not apply to employers covered by the federal Rehabilitation Act of 1973." Va. Code § 51.5-41(F). We believe that this language, when read in conjunction with § 51.5-46(C), is ambiguous. We see two possible interpretations: (1) because VDA's substantive prohibitions do not apply to employers covered by the Rehabilitation Act of 1973, it cannot be said that a discriminatory discharge by such an employer is a "violation of this chapter," rendering the exclusive remedy language of § 51.5-46(C) inapplicable; or (2) the legislature intended that all claims for disability discrimination be resolved through a particular statutory process, be it state or federal, with no duplication of effort, and no common-law remedy for anyone.

We therefore request the assistance and advice of the Supreme Court of Virginia on this unresolved issue of Virginia law.

With the concurrences of Judge Williams and Judge Motz,

K. K. Hall
United States Circuit Judge

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 15th *day of* January, 1997.

Andrew Bradick, Plaintiff-Appellant,

against Record No. 962531

Grumman Data Systems Corporation, Defendant-Appellee,

and

Northrop Grumman Corporation, Defendant.

Upon consideration of the order of certification entered by the United States Court of Appeals for the Fourth Circuit, this Court accepts the question of law certified by the said United States Court of Appeals in this case.

Oral argument tentatively is scheduled for 30 minutes during the April 1997 session of this Court. The time for filing plaintiff-appellant's opening brief and appendix and the designation of the parts of the record to be included in the appendix shall run from the date of this order. The filing of all other briefs and pleadings shall be in accordance with Rules 5:26 through 5:32.

A Copy,

Teste:

Clerk