

September 16, 2020 - Webinar

9:00 a.m. to noon

**CONSUMER, DATA BREACH, AND PRIVACY LAW IN WV
CLAIMS - DEFENSES - RESOLUTION**

Speakers:

Troy N. Giatras, Esq. The Giatras Law Firm

M. David Griffith, Jr., Esq., Thomas, Combs & Spann, PLLC

Matthew Stonestreet, Esq., The Giatras Laws Firm

Edward "Edd" D. McDevitt, Esq.

CLE: 3.0 general credits

TROY N. GIATRAS

Owner of The Giatras Law Firm, PLLC in Charleston and for the past 30 years has practiced civil and criminal law, now with an emphasis in consumer protection cases. Troy is admitted in West Virginia; several surrounding States, Federal Courts; and, the United States Supreme Court. Troy attended Duquesne University in Pittsburgh, Pennsylvania and the West Virginia College of Law.

Troy is a member of the West Virginia Association for Justice, American Bar Association, A.A.J., Consumer Attorneys of California; and, a life member of the National Association of Criminal Defense Attorneys.

He has served as the Chair of several litigation groups, has presented the cause of the Respondent before the United States Supreme Court and currently serves on several community Boards, along with the WVU College of Law Visiting Committee.

M. David Griffith Jr. – Partner, Thomas, Combs & Spann, PLLC

David counsels clients regarding federal and state consumer protection laws, compliance with federal and state banking laws and has tried cases alleging improper loan collection, predatory lending, fraud, negligence and violations of federal and state consumer credit and protection acts. David has previously served as regional counsel for one of the country's largest national banking associations, overseeing litigation in a geographic area covering 16 states. In 2017, he obtained two unanimous decisions from the Supreme Court of Appeals of West Virginia involving consumer claims under the WVCCPA.

Edward D. (“Edd”) McDevitt/Summary Format

Attorney, Arbitrator, Mediator
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Summary of Professional History

On May 1, 2014, Edd withdrew from the firm of Bowles Rice LLP as a Senior Partner to provide full time neutral services as a mediator and arbitrator. His background includes over 40 years of alternative dispute resolution, encompassing mandatory and voluntary court-based and contract based arbitration and mediation. The United States District Court for the Southern District of West Virginia appointed Edd as a member of its first panel of mediators, where he mediated a number of complex matters, including those involving serologist Fred Zain (“famous” in Texas and West Virginia for faking the lab results). He also served as the primary West Virginia arbitrator in the U.S. Securities and Exchange Commission proceedings against Prudential Securities.

As a practicing attorney Edd represented plaintiffs and defendants, individuals and business entities, primarily in commercial and business dispute resolution in federal and state trials, arbitrations, mediations, negotiations, settlements and enforcement actions. While primarily a defense lawyer, he has served as the chair of the Commercial Litigation Section of the Association of Trial Lawyers of America (now the American Association for Justice).

Education

Edd received his J.D. from West Virginia University College of Law in 1974, A.B. from West Virginia University in 1969 and his A.A. from Community College of Philadelphia in 1967 where he was a member of the first graduating class. Edd taught at CCP and was the first alumni member of the Board of Trustees.

Organizations (selected)

Edd is a Fellow-American College of Civil Trial Mediators as well as a member of the West Virginia State Bar and its ADR Committee. He is a member of Dispute Resolution Section of the American Bar Association (Co-Chair 2018, 2019 and 2020 Advanced Mediation and Advocacy Skills Training Institute, Co-Chair Mediation Committee 2019—); Litigation and Business Law Sections, Construction Law Forum and various committees; while in active practice he served as Liaison with the West Virginia Securities Division.

In his spare time Edd enjoys American History (pre-1720). His community service includes the Funds for the Arts where he is a Board Member and volunteering at Charleston Area Medical Center - Women and Children Hospital where he is a “cuddler” for newborns.

Recognitions (selected)

Fellow-American College of Civil Trial Mediators
Martindale-Hubbell AV (5.0/5.0)
Best Lawyers in America
West Virginia University - Mountain Honorary

Matthew Stonestreet

Matthew Stonestreet focuses his practice of law on a wide array of litigation aspects involving both civil and criminal matters with an emphasis in consumer and privacy law. Prior to joining the Giatras Law Firm, Mr. Stonestreet enjoyed serving the public as Assistant Attorney General in the Consumer and Antitrust Division. During his studies at the West Virginia University College of Law, he was a Lugar Trial finalist, participant in three regional and national trial competitions, and was an executive member of the Recruitment Committee. Matthew grew up in Bluefield, WV and loves working and living in his home state with a passion for public interest law. Matthew has been awarded a New Lawyer Excellence Award by the National American Association for Justice and also received a Pound Appellate Advocacy Award Nomination for his work on data breach cases. He is a SuperLawyer as well. More recently, Matthew has been appointed class action counsel in numerous cases and litigated in other national class actions as a peon. He enjoys very much the opportunity to continue energetically serving the people of West Virginia and other jurisdictions.



DEFENDING CONSUMER CLAIMS IN WEST VIRGINIA

M. David Griffith, Jr.
Thomas Combs & Spann, PLLC

Analyze All Available Defenses

01

Responsive
Pleadings

02

Is the case
removable?

03

Is there an
enforceable
arbitration
agreement?

Bluestem Brands, Inc. v. Darlene Shade,

805 S.E.2d 805 (W. Va. 2017)

We find further that Bluestem, as a non-signatory to the agreement, may utilize the theory of equitable estoppel to compel arbitration under the agreement. *Id.* at 808.

State ex rel. Morrissey v. Copper Beech Townhome Communities, 806 S.E.2d 172 (W. Va. 2017)

- "This Court has observed that the purpose underlying the CCPA is as follows: 'We have recognized the dual legislative purposes of protecting consumers and promoting sound and fair business practices.'..." *Id.* at 175 quoting, *White v. Wyeth*, 227 W.Va. 131, 136, 705 S.E.2d 828, 836 (W.Va. 2010)
- "Further, this Court has stated that the CCPA 'is a comprehensive attempt on the part of the West Virginia legislature to extend protection to consumers and persons who obtain credit in state.'..." *Id.* at 175 quoting, *Harper v. Jackson Hewitt, Inc.*, 227 W.Va. 142, 151, 706 S.E.2d 63, 72 (W.Va. 2010).

***State ex rel. Morrisey v. Copper Beech Townhome Communities*, 806 S.E.2d 172 (W. Va. 2017)**

- The West Virginia Consumer Credit and Protection Act is intended to: (1) increase the availability of consumer credit by raising allowable finance charges (interest rates) and move toward equalization of rates available to consumers whether they borrow the money from a lender or buy the goods on credit from a seller; (2) regulate the rate of finance charges allowed for consumer credit transactions by prescribing rates and rules for computation; (3) regulate those businesses which make small consumer loans and which were formerly regulated by the small loan act; (4) protect consumers who purchase goods or services on credit or through consumer loans from deceptive selling techniques, unconscionable contract terms, and undesirable debt recovery and collection practices; and (5) protect consumers who purchase goods or services for cash or credit from, and to give them remedies for, defective or shoddy goods and services and unfair and deceptive selling practices. *Id.* at 175 quoting, *V. Cardi, The West Virginia Consumer Credit and Protection Act*, 77 W.Va. L. Rev. 401, 402 (1974-75).

***State ex rel. Morrissey v. Copper Beech Townhome Communities*, 806 S.E.2d 172 (W. Va. 2017)**

- This Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation. It is the duty of the Legislature to consider facts, establish policy, and embody that policy in legislation. It is the duty of this Court to enforce legislation unless it runs afoul of the State or Federal Constitutions. *Id.* at 180.

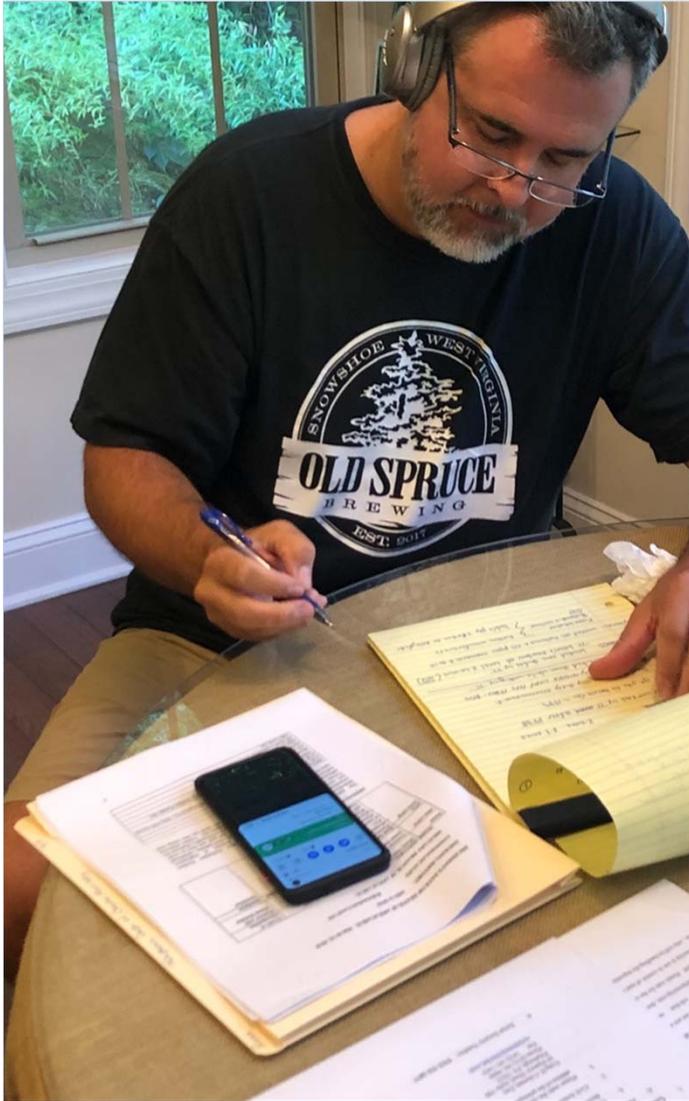
Practice Considerations in the era of COVID-19

- Client Communication Issues
- Access to Information
- Witness Availability
- Decision-Making Authority
- Settlement Authority
- Stipulations
- Deposition Protocol
- Courtroom Technology
- Trial Logistics
- Docket Pressure
- Executing Judgment



Perception

An ideal
courtroom
setting in the
wake of
COVID-19



Reality

Taking a telephone deposition while sharing
wi-fi with 5 others working online from
home

Tips for Collectors and Original Creditors

* Know the law in each jurisdiction

* Establish policies and procedures

to avoid errors

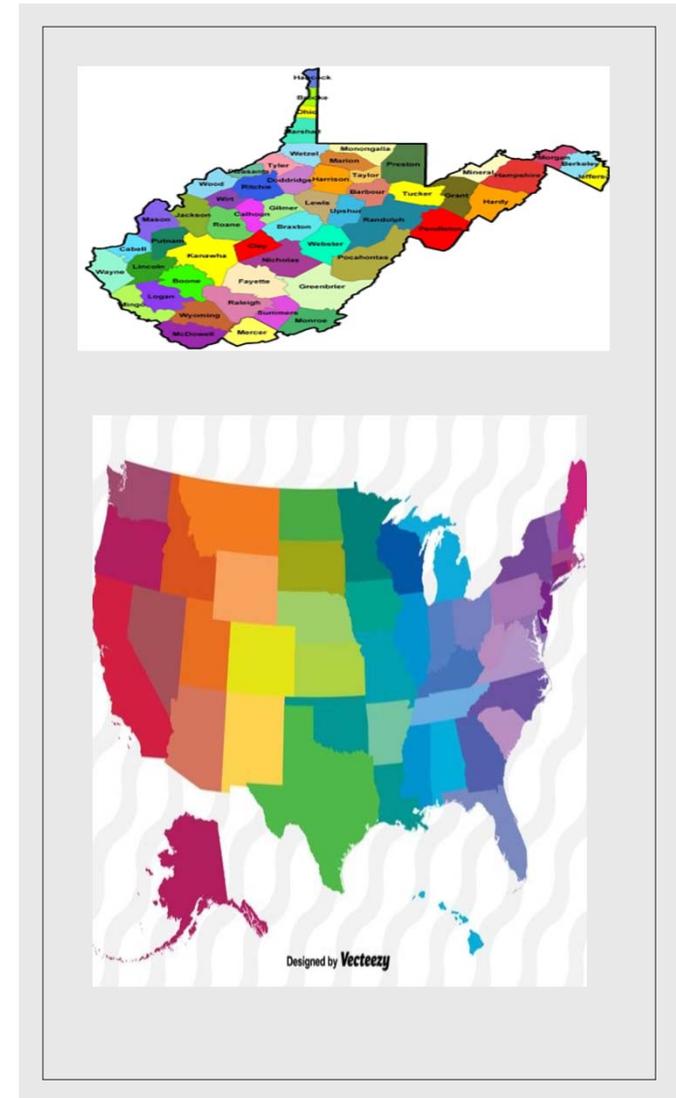
* Maintain those policies and procedures

* Follow and track bills moving through state legislatures

* Look for cases of first impression

* Implement a strong, fair and consistent strategy

litigation



Defending Individual vs. Class Action cases

- What is the magnitude of the case?
- Focus on the legal issues
- Understand your opponent
- Role of Experts and Consultants
- Understand your client's business
- What is the end goal?
- What will a "victory" look like?
- Analyze exposure and budget resources
- Developing and managing discovery
- Pre-certification Defense
- Public Relations Aspect
- Post-certification Defense
- Approval of Settlement

QUESTIONS?

THANK YOU!

M. David Griffith, Jr.

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