

*“Foggy Tops”  
Employment Dispute*

**Attorney for  
Wells Menz**

## Background

Foggy Tops Consulting is a large and powerful consulting firm that provides economic analyses to various international organizations, including the World Bank, International Monetary Fund and the UN. The organizations use the recommendations and analysis of Foggy Tops to decide on whether to endorse or even sponsor various investment projects throughout the world. Foggy Tops has a number of high-placed relationships throughout the world in media, academics and publishing.

Wells Menz was hired two years ago by Foggy Tops. Before being recruited by Foggy Tops, Menz was formerly a professor of econometrics at Harvard and had published a number of prominent journal articles examining the economies of a number of developing countries, particularly in Sub-Saharan Africa (a particular attraction to Foggy Tops, who have no experts for that region on staff). Menz reluctantly left the academic world upon receiving the invitation to join Foggy Tops (and the tripling of his salary). He also enjoyed the increase in accoutrements (the car, four-star travel accommodations, profit-sharing, bonuses, and extravagant retirement and health care packages) as well as other opportunities for promoting himself (speaking tours and meeting the many friends of Foggy Tops in the publishing business).

For the last few weeks, Menz has been on a speaking tour funded by one of Foggy Tops' largest corporate clients, where he has been forcefully denouncing (sometimes on national news outlets) alleged corruption in the UN's ineffective response in the Congo and embarrassing the UN, one of the largest clients of Foggy Tops. In fact, contracts with the UN alone account for nearly 20% of all Foggy Tops revenue.

A day after a conference call between the UN and Foggy Tops management about a potential new consulting opportunity for Foggy Tops in Tanzania, the CEO of Foggy Tops called Menz into her office and fired him on the spot: "I am firing you for cause, so enjoy your last paycheck from us. Maybe you can get a gig back at your old high school teaching basic customer relations. How can you expect us to sit back and watch while you excoriate our biggest client on national TV?"

Menz responded angrily: "When you recruited me out of Harvard you made all of these promises about supporting my career and giving me opportunities to make a name for myself, but the only thing I got was this ridiculous corporate junket – well guess what, all this company (a client of ours, remember) wants to hear about is how weak the UN is – all of which you know is true, by the way. This is not my fault. But no problem – read my contract again, you imbecile. Despite what you say, you are firing me without cause, which means I get a nice severance. And you have definitely created large expectations for me in terms of financial possibilities!"

Under Menz's employment contract, "Foggy Tops may fire any employee for cause, which entitles employee to no further compensation whatsoever." "Cause" is defined as "illegal activity, fraud, plagiarism or a breach of this employment contract." The employment contract also contains a poorly-worded, vague clause that states: "Employee shall not jeopardize future business for Foggy Tops by saying negative false and untrue things about future clients or impacting future business deals."

Concerning the pay that an employee is to receive if fired without cause, the employment contract states that an employee is entitled to "the pay Employee would receive over the next year." It is not clear whether this is limited to base pay (for Menz about \$250,000 base), or includes other benefits (worth up to another \$200,000 potentially).

After his meeting with the CEO, Menz sent a letter addressed to Foggy Tops' legal department that stated, "I am officially notifying Foggy Tops of my intent to file a civil complaint for breach of my employment contract by the end of this month. The CEO has indicated to me that she is terminating my employment and will not be paying any severance whatsoever. Since she has fired me without cause, I am entitled to whatever sums I could have earned over the next year, which I estimate to be approximately \$500,000, plus my pain, suffering and other compounding factors – I shall start the calculations. Of course, if I need to file a civil complaint, I will require significantly more than that to cover additional pain and suffering, as well as my legal expenses, which will be hefty."

You are the lawyer for Wells Menz. You have a meeting with the lawyer for Foggy Tops. You will have approximately 60 minutes for your meeting. As you prepare for your meeting, also think about the following questions:

1. What should you prepare in advance? Before your meeting with the lawyer for Foggy Tops, we will have a brief internal meeting and I will be available to answer questions from the perspective of Wells Menz. Be ready for that meeting with any questions you might have.
2. How should you begin the meeting with the lawyer for Foggy Tops? What agenda or timetable might be helpful? The 60 minutes or so will go fast (or painfully slow) if there is no structure to the meeting.
3. What information do you need from the other side? How might you obtain that information?

**Addition instructions from the client:**

Your client is very nervous about the people at Foggy Tops. This is a firm that your client has seen treat other people pretty roughly. Your client has been clear to you that you are to be careful about sharing too much information. In fact, he wants you to focus the negotiation with Foggy Tops on the cash settlement that he is owed and deserves. You assured him that you are a fairly adversarial negotiator and have no plans to openly communicate the interests of your client (although you will be respectful, truthful and cordial to the extent required in the conversation with Foggy Tops' counsel).

You know that your client wants out of Foggy Tops no matter what. He told you the place is a "sweat shop" that will promote any agenda – no matter how repulsive – so long as the customer is willing to pay the right fee. Your client is eager to see what he can make of himself as a "celebrity economist" or some role to expound on his "brilliance." He would even consider returning to the academic world if he can figure out how to stay in the "travel-the-world" mix (and get published).

Your client has authorized to take any deal that includes at least \$200,000 cash. Your client also told you that he really wants to resolve this fast and move on with his life.