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May 9, 2013

Patricia L. Harrington
Clerk, Supreme Court of Virginia
100 North Ninth Street, 5th Floor
Richmond, VA 23219-1315

Re: Assurance Data, Inc. v. John Malyevac;
Record No. 121989

Dear Ms. Harrington:

Enclosed for filing in the above-referenced matter is an errata sheet for page 6 of Mr. Malyevac's Brief of Appellee correcting an error pointed out on page 3 of the Appellant's Reply Brief.

Sincerely,

Lee B. Warren

Lee B. Warren

Enclosures

cc: C. Dean Latsios, Esquire (with enclosures)

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amend." *Id.* at 8, 439 S.E.2d at 356. This Court could not review the circuit court's decision because the plaintiff had failed to preserve for appeal the facts which she would have alleged. Here, Assurance failed to proffer to the circuit court the evidence that it would have offered to support the validity of its noncompetition clause. The evidence certainly did not appear as allegations in the Complaint. Assurance failed to make the proffer even in its Motion for Reconsideration, which expressly raised the issue of amendment. This Court cannot evaluate the circuit court's decision without knowing what the circuit court would have heard, and Assurance failed to preserve that information for this appeal. This Court should therefore affirm the circuit court's decision to strike the noncompetition clause.

**B. The Noncompetition Clause Is Overly Broad**

A non-competition clause may not forbid "activities in which [the employer was] not engaged." *Richardson*, 203 Va. at 795, 127 S.E.2d at 117. Under Paragraph 5