# FAVORABLE SETTLEMENT NEGOTIATED IN CONSIDERATIONS LAWSUIT FOLLOWING COMPANY ACQUISITION

A Hodgson Russ team of attorneys won a settlement for a business clients worth hundreds of thousands of dollars and more than 50 percent of the defense team's fees. The case began after our client's acquisition of a privately held company, when it became known that the acquired company had made errors in applying vesting provisions of its employee benefits plan. This meant that additional consideration had to be paid to certain plan participants to compensate them for shares of stock to which they were entitled. Unfortunately for our client, the sellers' liability for the additional consideration depended on the subject matter of the breach. For claims based upon breaches concerning the employee benefits plan, the sellers were liable only for losses exceeding $750,000, while claims arising from capitalization misrepresentations were not subject to any minimal threshold. Because the additional consideration did not exceed the minimal threshold for employee benefits plan breaches ($750,000), the sellers filed a claim denying our client's right to access the escrow fund established during acquisition to cover payment. Our attorneys were thus tasked with convincing the court that the additional consideration our client was being forced to pay resulted from capitalization misrepresentation and not from errors in plan administration. Settlement negotiations began the eve of the argument for a motion of summary judgment, after it became clear that the Hodgson Russ defense team had built a strong case. The plaintiff requested a discontinuation of the action in exchange for the distribution of escrow funds to cover our client's losses. Our attorneys also discovered that the indemnity clauses in the acquisition agreement permitted our client to recover attorneys' fees from the sellers in the event that a claim for capitalization misrepresentations was successfully enforced. After further negotiations, our client agreed to discontinuance of the action in exchange for recovery of its losses from escrow and reimbursement of more than 50 percent of the attorneys' fees it had incurred over the course of the dispute.

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Business Litigation