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## Firm Utilizes Key Deposition Testimony to Obtain Arbitration Victory

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Summer 2010

When the Firm's client purchased a regional home pharmacy, a portion of the purchase price was held back in an escrow fund to be paid to the seller if outstanding accounts receivable were collected during a specified collection period. Any amount uncollected was to be returned to our client. After the collections period ended, the seller contended it was owed what remained in the escrow fund (\$1.5 million), alleging that our client did not meet its obligation to use "commercially reasonable efforts" to collect the receivables.

The seller's entire claim rested on its estimate of the collectability of its receivables. At the time of the acquisition, the seller represented to our client that its estimate of what was collectible was based on actual, historical collections data. Through discovery, the Willenken Firm obtained some startling admissions from the seller and its main percipient witness.

In a five-day binding arbitration, the Firm capitalized on the evidence it had gathered. Our attorneys gutted the seller's case by proving that (1) the seller misrepresented the collectability of its receivables to our client by using inflated data and (2) when the estimate was revised to reflect the true historical collections data, our client actually exceeded that rate by a significant sum.

The Arbitrator found the Willenken Firm's arguments to be "compelling" and "dispositive," and noted that the Firm's attorneys successfully impeached the seller's chief witness. He rejected the seller's "anecdotal evidence" that our client did not use commercially reasonable efforts to collect and found the seller's main witness to be incredible, "confusing and unpersuasive." He ordered that the entire balance of the escrow fund be returned to the Firm's client.

ATTORNEYS

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PRACTICE AREAS

Complex Business Litigation