

## Securing Critical Jury Waiver Leads to Trial Victory

Winter 2013

All seasoned trial lawyers know that there are times when it is highly advantageous for a judge, rather than a jury, to hear your case because of the potential for jurors to feel an affinity with an opposing witness or party. This was the situation recently confronted by the Willenken Firm's client, a leading internet technology company, when a former high-ranking employee sued to recover \$13 million in bonus compensation under an incentive compensation plan. While the company had meritorious legal defenses against the executive's claims, the executive was a gregarious salesman who would have undoubtedly had the jury rapt with the yarn he intended to spin. Recognizing this potential pitfall, the Willenken Firm quickly set about executing its plan of moving the case to a bench trial.

Almost immediately, the Willenken Firm filed a motion to strike plaintiff's jury demand based on the jury waiver provision encompassed in a foundational contract between the parties. Unsurprisingly, plaintiff opposed, arguing that pre-dispute jury waivers are void under the California Supreme Court decision of Grafton Partners. But, as the Willenken Firm adroitly identified, pre-dispute jury waivers are enforceable in California federal court (irrespective of Grafton Partners), where plaintiff had filed suit under diversity jurisdiction. The Willenken Firm prevailed, and this critical strategic move minimized the impact of a grandstanding plaintiff and paved the way to victory in bifurcated bench trials that ultimately resulted in settlement.

Specifically, in phase one of the bench trial, the court ruled in favor of the firm's client on key issues of contract interpretation and parol evidence that drastically reduced the dollar value of plaintiff's claim. In phase two, which focused on remaining contractual disputes, firm partner William Delgado expertly cross-examined the plaintiff and severely impeached his credibility. Mr. Delgado had so undermined plaintiff's testimony that, during a subsequent break in the proceeding, the court recessed the trial and spoke, at length, about the benefits of settling cases. Unsurprisingly, the plaintiff immediately backed off of its previous unyielding settlement demands and, by the end of the week, the parties had reached a resolution.

### ATTORNEYS

Delgado, William

### PRACTICE AREAS

Complex Business Litigation