

Mortimore vs. Merge Healthcare

by Michael J. Summerhill

A FREEBORN & PETERS LITIGATION VICTORY

On Wednesday, July 17, 2013, Merge Healthcare Incorporated won a significant victory at arbitration in *Mortimore vs. Merge Healthcare Inc.* This case dates back to April 2009 and continues to this day.

Plaintiff, William Mortimore, was the founder and former CEO of Merge. He was asked to resign in June 2006 during an internal investigation into revenue recognition practices. Merge and William Mortimore were also the subject of an SEC investigation, securities fraud class action and a shareholder derivative action during this time. Mortimore sought corporate indemnification during those proceedings. In 2009, Merge stopped advancing Mortimore's defense costs, and a year later, Mortimore filed suit against Merge for indemnification and breach of an alleged oral contract.

Merge filed a motion to stay pending arbitration pursuant to Mortimore's employment contract. Mortimore contended that he had an oral employment contract that replaced his contract that required arbitration. Over Merge's objections, the trial court ordered extensive discovery and a three-day hearing to decide the issue of the existence of an oral contract. Merge eventually appealed the trial court's finding of an oral contract and the Wisconsin Court of Appeals found in favor of Merge and held that the initial question of whether there was an oral employment contract must be decided by an arbitrator.

Mortimore filed the arbitration demand in January 2013 asking for the arbitration to be dismissed because of the existence of the alleged oral contract. The arbitrator ruled in favor of Merge and held that not only did Mortimore not have an oral contract, but that his original contract with an arbitration provision controlled the relationship between the parties and therefore all claims by Mortimore and all counterclaims by Merge were for the arbitrator to decide.