

# William C. Mortimore and David Noshay v. Merge Technologies, Inc.

by Michael J. Summerhill

## A FREEBORN & PETERS LITIGATION VICTORY

**M**erge Healthcare Incorporated (“Merge”) won a significant victory in an American Arbitration Association arbitration before the Honorable Michael Brennan in Milwaukee, Wisconsin in the case of *William C. Mortimore and David Noshay v. Merge Technologies, Inc.* Mr. Mortimore was a former officer and Chairman of the Board of Directors of Merge that sued seeking his severance and indemnification of legal expenses incurred in defending himself in an investigation by the Securities and Exchange Commission and a shareholder derivative action.

2006 was a tumultuous period in Merge’s history in which it underwent an intensive investigation into accounting improprieties which eventually required the restatement of company revenues. William Mortimore a former executive and Chairman of the Board for Merge and the company’s founder, was subsequently implicated, along with other senior Merge executives, in the accounting improprieties. Upon discovery of his conduct, Merge’s board of directors gave Mortimore the choice to resign or to be terminated for cause. Mr. Mortimore chose to resign from all positions with the company in July 2006 and Merge paid no severance.

In May of 2009 Mr. Mortimore sued Merge alleging, among other things, that Merge breached his employment contract by not paying him severance when he voluntarily resigned. Merge moved to dismiss the complaint and have the matter arbitrated pursuant to Mr. Mortimore’s written employment contract. In response, Mr. Mortimore filed an amended complaint alleging that he had an oral employment contract that did not contain an arbitration provision and had much more generous severance terms. Merge to its credit, through extensive discovery, multiple hearings, and an appeal before the Wisconsin Appellate Court, that notably set important precedent on the issue of arbitration in Wisconsin, stayed the course and was rewarded with a ruling in July 2013 that concluded that Mr. Mortimore was bound to his written employment contract and therefore must bring his severance claims before the AAA.

Those claims were filed in August of 2013, again alleging Mr. Mortimore was owed severance under his written employment contract under the guise that his resignation was in fact forced and Merge did not have good cause to ask for his resignation. The parties held a five day arbitration in March of 2014 and on April 31, 2014 the Arbitrator vindicated Merge’s position and held that Mr. Mortimore was not entitled to severance. The arbitrator expressly held that Mr. Mortimore’s conduct was a material violation of company policy that negated the obligation to pay severance and that his actions constituted willful misconduct for purposes of Wisconsin’s corporate indemnification statutes. In addition, the arbitrator concluded that Merge was entitled to the fees and expenses it incurred to enforce the arbitration provision.