



**SIXTH CIRCUIT FEDERAL COURT OF APPEALS DECIDES THAT A
MISREPRESENTATION IS NOT BARRED BY THE PAROL EVIDENCE RULE**

This hotly-contested commercial dispute is between former members of Newark Health Imaging (“NHI”) (now part of The Medical Center of Newark). Academic and Soterion both owned half of NHI until a disagreement over management led Soterion to sell its half-interest to Academic, we represented Academic. Here’s what happened:

- In the sale offer, Soterion represented that it made \$300,000 of capital contributions to NHI;
- The purchase price was thus specifically set at \$707,000;
- Soterion later re-characterized the \$300,000 as a loan;
- The sale contract did not say anything about the \$300,000. The purchase agreement stated a \$707,000 purchase price, not how it was calculated.

The core issue in this Case was whether a misrepresentation in an initial offer letter can be used as evidence if the ultimate contract is silent about that fact. The District Court excluded the original offer letter as parol evidence. The Sixth Circuit reversed. Here’s why:

- The parol evidence rule bars the use of facts that contradict or change a contract’s words;
- But evidence of fraud, mistake, or misrepresentation can be shown by parol evidence if it is consistent with the language of the contract;
- Here, the evidence in the offer describing how the purchase price was calculated is admissible to show how Academic was induced to buy Soterion’s half-interest; and

- The misrepresentation in the offer was consistent with the contract.

This evidence is critical to show that Soterion did not meet its duty to act honestly and in good faith by either making misrepresentations in the first place and/or failing to disclose important facts after the sale.

A full copy of the decision, **Academic Imaging v. Soterion Corp.** (App. Case No. 08-3577) (6th Cir.) can be found on our web site. See Havenslimited.com "On Tract" or you can contact Jim Havens – Jhavens@havenslimited.com, 141 East Town Street, Suite 200, Columbus, Ohio 43216. Phone (614) 228-6888.

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