# Unearthing the Truth Behind a Plaintiff's Tale of Woe

Our client, a Fortune 100 Telecom Company, had sold off one of its money-losing manufacturing divisions. The buyer, a competitor and industry leader, had worked with our client for years, admittedly knew our client's business well, and had what it stated was a solid turnaround plan for the business. The buyer performed extensive due diligence and closed on the acquisition in March of 2000.

The acquisition did not go as planned – or did it? After experiencing significant first-year losses, the buyer sued our client, claiming that significant negative facts had not been disclosed, and that material adverse changes had occurred prior to closing without disclosure, particularly as it related to three products with high expectations. The initial damage claims totaled over $600 million.

**The acquisition had not gone as planned – or had it?**

Schulze Haynes Loevenguth & Co. was retained to evaluate all facets of the causation and damages portions of the case.

We started by asking the basic question – did the business really fail to perform as expected, or were its losses and continuing decline in market share a predictable path that the buyer was, or should have been, aware of? Our investigation revealed that:

- The buyer's own core business had followed a similar path during the period at issue, with stagnating revenue and poor performance in the market segment into which the products at issue fell.
- The acquired business actually improved from its previous path of ever-growing losses and shrinking market share.
- The market was shifting dramatically during this period, and competitors' experiences very much tracked both the buyer's and the acquired business' results.
- The buyer's due diligence had revealed or confirmed *the very facts that they were now claiming had been withheld from them by our client.*
- Internal "smoking gun" memos, of which there were several, indicated that the buyer, despite their public statements predicting a rapid turnaround in the business, anticipated the likelihood of continuing severe losses, and in fact discussed ways in which accounting results could be manipulated in order to reflect the appearance of a turnaround in progress.

The case was filed in U.S. District Court – Southern District of New York. We prepared a detailed report, with hundreds of exhibits, that disarmed virtually every category of damages claimed by the Plaintiff.

***Result: the case settled before trial, quite favorably for our client at a small fraction of the initial claim.***

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