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Pryor Cashman Obtains Dismissal of Fraud and Other Shareholder Claims Against Client Prior to Discovery

Pryor Cashman's client, Incentra Solutions, Inc., a publicly traded company engaged in storage management and data protection solutions, obtained a dismissal with prejudice in connection with a shareholder strike suit in the U.S. District Court of New Jersey. In the lawsuit, individual shareholders, including the company's prior CEO, had alleged that the company had committed a host of unlawful activities, including fraud, breach of contract, civil conspiracy, breach of fiduciary duty and negligence in connection with a convertible note purchase agreement for the issuance of shares of company stock.

Litigation partner Perry M. Amsellem, together with associates Mark Tamoshunas and Suyin So, moved to dismiss the complaint with prejudice prior to any discovery, arguing that the notes and agreements between the parties so contradicted each claim raised by the plaintiffs that the complaint was sanctionable under Rule 11 of the Federal Rules of Civil Procedure. Pryor Cashman also wrote a Rule 11 letter to plaintiffs' counsel outlining the baseless nature of the claims, warning that the complaint appeared to be sanctionable as frivolous litigation. Counsel for plaintiffs moved to withdraw from the litigation, which plaintiffs opposed. The Court ultimately dismissed the complaint with prejudice by Order dated July 5, 2007.