

United Rentals, Inc. v. Cerberus Capital Management

THE CLIENT: Milbank, Tweed, Hadley & McCloy LLP

THE CASE: In the last days of 2007, United Rentals, Inc., sued Cerberus Capital Management to compel specific performance of a \$7 billion buyout. In this case in the Delaware Court of Chancery, Cerberus successfully argued that specific performance was not appropriate in this case, based on the history of the contract negotiations.

THE TRIAL: The trial began only 30 days after the complaint was filed. The case hinged on proving that specific performance was not appropriate in light of the negotiations that led up to the buyout agreement. The Milbank team retained DOAR to provide trial consulting services including

- Setting up a war room with the necessary technology to prepare cross examinations with the trial team in advance of the next day's proceedings
- Preparing an analytical graphics demonstrative presentation to coordinate with counsel's opening statement
- Presenting all case evidence in court, including document displays and video deposition clip segments of testifying witness for impeachment purposes

THE OUTCOME: By highlighting key language in successive versions of the contract, we enabled our client to persuasively demonstrate that the parties did not intend a remedy of specific performance in this case – and it took Chancellor Chandler only two days to come to a decision in Cerberus's favor. In his opinion, the Chancellor stated:

“In classical mythology, it took a demigod to subdue Cerberus, the beastly three-headed dog that guarded the gates of the underworld.... In this case, plaintiff United Rentals, Inc. journeyed to Delaware to conquer a more modern obstacle that, rather than guards the gates to the afterlife, stands in the way of the consummation of a merger. Nevertheless, like the three heads of the mythological Cerberus, the private equity firm of the same name presents three substantial challenges to plaintiff's case: (1) the language of the Merger Agreement, (2) evidence of the negotiations between the parties, and (3) a doctrine of contract interpretation known as the forthright negotiator principle. In this tale the three heads prove too much to overcome.”