

## **Summary Judgment Won on Behalf of Business Broker in Professional Negligence Action for Fraud and Breach of Fiduciary Duty**

By January 8, 2015

**Billy Davis** won summary judgment on behalf of a business broker he represented in an action alleging fraud and breach of fiduciary duty in the sale of a trucking business.

The Plaintiff was a first-time business buyer who elected to purchase the assets of a small trucking business. During the due diligence period prior to the sale, the Plaintiff was presented with thousands of pages of financial documents for inspection. The Plaintiff did not hire an attorney, CPA or other professional to assist him in reviewing the documents and evaluating the business. After several hours of looking through invoices, the Plaintiff concluded the due diligence period and purchased the trucking business. The documents he signed in connection with the purchase contained non-reliance provisions by which the Plaintiff expressly disclaimed any reliance on any statement or action of the broker.

After several months of operating the business, the Plaintiff discovered information which led him to believe that the former business owner had falsified certain financial records. The Plaintiff then sued the former owner as well as the business broker who facilitated the sale. The Plaintiff alleged that the broker breached a fiduciary duty and participated in a fraud when he failed to provide certain advice to the Plaintiff.

The trial court ruled that the broker owed no fiduciary duty to the Plaintiff as he never acted as the Plaintiff's agent. Furthermore, the court held that the non-reliance provisions in the purchase agreement barred the Plaintiff from asserting a fraud claim since he had disclaimed any reliance on any act or statement by the broker.

**Billy Davis** is a Litigation Associate whose practice focuses on Professional Liability, Premises Liability, Products Liability and Insurance Coverage.