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Lessons from a Jury Trial

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Editor's Note: Paul Vizcarrondo is a partner in the Litigation Department of Wachtell, Lipton, Rosen & Katz specializing in corporate and securities litigation and regulatory and white collar criminal matters. This post is based on a Wachtell Lipton memorandum by Mr. Vizcarrondo, John F. Lynch, Carrie M. Reilly, Lindsey M. Weiss, and Molly K. Grovak.

A recent *Yale Law Journal* article describes a "striking trend in the administration of civil justice in the United States"—"the virtual abandonment of the centuries-old institution of trial." In recent times, only approximately 1% of federal civil cases end in jury trials. Deep-pocketed companies often settle before trial because they fear that jurors will sympathize with individual plaintiffs and that jurors may lack the patience and ability to weigh complicated evidence. This is especially true for financial institutions in the current public-relations climate. But our recent experience co-defending Goldman Sachs in a five-week jury trial demonstrates that corporate defendants need not avoid juries at all costs, especially where important principles are at stake and there is a strong belief that the claims are baseless.

Last week in *Baker* v. *Goldman Sachs*, a Boston jury unanimously found for Goldman and rejected claims by individual plaintiffs, all Boston based, of negligence, fraud, and breach of fiduciary duty. The case stemmed from Goldman's role as financial advisor to Dragon Systems, a developer of speech-recognition software. Dragon was acquired by Lernout & Hauspie Speech Products in an all-stock deal in 2000. L&H soon collapsed in a massive accounting fraud, and the stock that Dragon shareholders received in the merger became worthless. After recovering more than $70 million in settlements in a decade of litigation against other parties, four Dragon co-founders and major shareholders sued Goldman on the theory that Goldman should have detected L&H's accounting fraud and failed to disclose concerns it had about the due diligence process. The plaintiffs sought over half a billion dollars in damages.

A patient and attentive jury heard the testimony of 30 witnesses, including the plaintiffs, Goldman investment bankers, Dragon executives and advisors, and expert witnesses.In a nerve-testing new twist for us, the judge allowed jurors themselves to ask questions of witnesses. The jurors' perceptive and penetrating queries demonstrated their attention to the facts and revealed their

interest in specific issues. The jurors then spent three full days deliberating before returning their verdict in Goldman's favor on all counts.

The experience reinforced our view that if corporate defendants present a case that respects jurors' time and intelligence, jurors will reciprocate with attention, thoughtfulness, and a profound respect for the vital role they play in our judicial system. To be sure, the inherent unpredictability of jury deliberations may make jury trials generally unpalatable for corporate decisionmakers, and the centuries-old institution of civil trials may continue to diminish for that reason. But the lesson we take away from the Dragon case is that jury trials remain a viable way to resolve civil disputes, and the specter of a jury trial in and of itself should not compel corporate defendants to settle disadvantageously.