

# Kelley Drye Wins Dismissal of Former Executive's Lawsuit and Arbitration Proceeding Against Advanced Interactive Sciences

June 1, 2007

Kelley Drye won the dismissal of a lawsuit brought by a former executive of Advanced Interactive Sciences ("AIS"), a leading provider of intuitive voice recognition solutions to the direct marketing industry. The former executive claimed that AIS terminated him without cause and that, as a result, AIS owed him monetary compensation, including future commissions. Kelley Drye originally obtained a stay of the lawsuit, which was filed in state court in Tampa, Florida, and had the case referred by court order to the American Arbitration Association ("AAA"). On behalf of AIS, Kelley Drye answered the complaint and filed a counterclaim in the arbitration proceeding before the AAA.

AIS contended that it had no liability for the termination and did not owe the former executive anything, based on the legal doctrine known as the "after acquired evidence rule." Under the legal doctrine, a company may not be held liable for the termination of an employee under circumstances where the company had not known about the worker's background during the interview. Applying that doctrine here, Kelley Drye argued that the former executive would never have been hired given facts concerning his background that were determined by AIS after his termination and after he brought his lawsuit. His background included a \$1 million federal fraud judgment outstanding in Alabama, which Kelley Drye uncovered.

Kelley Drye persuaded the former executive to stay the arbitration proceeding and submit the dispute to non-binding mediation. As a result of the mediation, the former executive recognized the strength of AIS' arguments and the weakness in his own claims against the company and agreed to dismiss the lawsuit and the arbitration proceeding with prejudice and without receiving any money from AIS.