

Bernstein Shur Business and Commercial Litigation Newsletter

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We are pleased to present the fourth edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight articles and links addressed to significant securities fraud and antitrust disputes, as well as other developments that will have an impact on business and commerce. We hope that you enjoy the Newsletter.

In the News:

In a case addressed to federal securities law, the U.S. Supreme Court has ruled that investors in the company that makes Zicam nasal remedies may proceed with their securities fraud claims based on the company's failure to disclose reports of adverse affects, including loss of smell, from use of certain products. In the case, *Matrixx Initiatives, Inc. v. Siracusano*, defendants claimed that the data in question was "statistically insignificant" and therefore could not amount to an omission of material fact. The Supreme Court rejected this argument, stating that in certain cases, investors would act on evidence of causation that was not statistically significant, but nevertheless altered the "total mix" of information available.

[Click here to read more about the Supreme Court's decision.](#)

In the wake of AT&T, Inc.'s planned takeover of T-Mobile USA wireless, Sprint Nextel Corp officially has requested that government regulators block the planned deal based on anti-competitive concerns. Last week, AT&T announced that it would pay \$39 billion to T-Mobile's parent, Deutsche Telecom AG, in order to secure its 33 million subscribers. Sprint requested the government to block the transaction, asserting that it would harm consumers and competition, while creating a dominant player in the industry.

[Click here for an article from Businessweek regarding this topic.](#)

A federal judge has rejected a settlement between Google and groups of associations that represent authors and publishers in relation to Google's publication of books online. The trade groups, which had file a class action suit against Google based on copyright concerns, ultimately sought to resolve the dispute with Google in a settlement that would have resulted in digitization and access to millions of books through the Google Books program. Judge Denny Chin rejected the proposed settlement, stating that it circumvented the rights of copyright holders and otherwise would "further entrench" Google's dominant position in the marketplace.

[Click here for an article from PCMag.com regarding this topic.](#)

[Click here for an article from MSNBC on this topic.](#)

The federal government provided a waiver requested by the State of Maine addressed to a key portion of President Barack Obama's new health care programs. The waiver centers on the requirement that 80-85 cents of each dollar be allocated to medical care and quality enhancement. The State of Maine sought and obtained a waiver that allowed it to maintain a 65 percent care/enhancement ratio over the next three years, stating that enforcement of the higher amount could adversely affect the state's health insurance market for individuals.

[Click here to read more about the waiver.](#)



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