

Bernstein Shur Business and Commercial Litigation Newsletter**May 2011 | Issue 5**

We are pleased to present the fifth edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight articles and links addressed to significant cases addressed to class actions and trade secrets violations, as well as other developments that will have an impact on business and commerce. We hope that you enjoy the Newsletter.

In the News:

High Court Upholds Contractual Limitations On Consumer Class Actions. In a case that is likely to have far ranging impact on the ability of businesses to limit consumer class actions, the United States Supreme Court, on April 27, 2011, ruled that the Federal Arbitration Act preempted California law from overriding a clause in a consumer contract requiring that parties arbitrate their claims individually and not as part of a class action. See [AT&T Mobility v. Concepcion](#). The *Concepcion* plaintiffs filed a class action complaining of being charged sales tax on phones that AT&T advertised as "free" once you bought the service plan. AT&T sought to enforce an arbitration provision in the sales contract, which required the plaintiffs to arbitrate their claims and to waive their right to proceed as a class action. The Supreme Court, sharply divided along conservative-liberal lines (5-4), reversed a decision of the Ninth Circuit Court of Appeals that had applied California law to find that application of the contractual arbitration clause was "unconscionable" and therefore unenforceable. The decision strikes a significant blow to parties who may be inclined to attempt to avoid agreements to arbitrate future disputes. [Click here to read the Supreme Court's opinion.](#)

High Court Considers Standard For Certifying Securities Class Actions. With a number of shareholder class actions stemming from the world financial meltdown still pending in the federal courts, the Supreme Court heard oral arguments on April 25 in another case raising important class action issues. In *Erica P. John v. Halliburton*, the High Court will decide how trial courts should set the threshold for certifying shareholder class actions alleging securities fraud. Although the case presents several issues that are particular to private securities litigation, the decision will have an important impact on class action litigation generally. In most class actions, the critical issue in the case is whether the class is (or is not) certified. Stay tuned: the High Court's ruling later this year is likely to impact all future class certification decisions. [Click here to read more about the oral argument.](#)

A jury assessed a multi-million dollar award against Mattel, Inc. based on misappropriation of the trade secrets of MGA Entertainment, which manufactured a popular line of toys called Bratz. The jury also determined that Mattel's claim of copyright infringement related to competing products had no merit. The award came as a result of a retrial in front of a different jury. An earlier trial in which Mattel prevailed was overturned on appeal. Although the scope of trade secret protection varies by jurisdiction, a trade secret generally is understood as a legally protected interest, often comprised of a confidential formula, design, process, practice or compilation of information that provides competitive advantage. [Read the Bloomberg.com article here.](#)

In a another case addressed to misappropriation of trade secrets, a jury awarded \$2.3 billion to medical device maker, St. Jude Medical, Inc. In that case, the jury found that a former employee and the competing company he started made extensive use of SJM's proprietary and confidential information to compete against it. Defendants were held liable for their misappropriation of SJM's trade secrets, which had not been publicly known and for which reasonable protective measures had been taken. [Click here to read the article on St. Jude Medical, Inc.](#)



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