

Business and Commercial Litigation Newsletter

August 31 2011 | Issue 8

We're pleased to present the eighth edition of the Bernstein Shur Business and Commercial Litigation newsletter. This month, we highlight information regarding the attorney-client privilege and developments that will have an impact on business and commerce. We hope you enjoy the newsletter.

In the News:

In a pitched patent infringement battle related to Google's Android operating system, Google suffered a setback when a trial court judge refused to exclude a so-called "smoking gun" email on the basis of attorney-client privilege. Oracle, which owns numerous patents and copyrights for its Java programming language and operating platform, sued Google in August 2010 alleging willful infringement of Java patents and copyrights by Google in its Android operating system for mobile devices. The email in question, written by Google engineer Tim Lindholm to Google Android chief Andy Rubin, stated: "We conclude that we need to negotiate a license for Java under the terms we need." U.S. Magistrate Judge Donna Ryu was unpersuaded by Google's efforts to exclude the email on grounds of attorney-client privilege and ordered that it be produced to Oracle in unredacted form pending any appeal by Google. [Click here for the complete PCWorld article.](#)

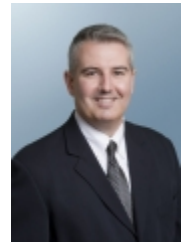
Bank of America Corp.'s \$8.5 billion settlement of claims from mortgage-backed securities holders of Countrywide Financial Corp. has been delayed by a request to remove the matter to federal court in order to review the fairness of the settlement. Countrywide Financial was purchased by Bank of America in 2008. Settlement of the state court action was aimed at fully and finally resolving claims addressed to mortgage-backed securities. Eleven entities have sought removal from New York state court to federal court, citing conflicts of interest of larger investors seeking settlement. Meanwhile the FDIC, which is the receiver for several failed holders of the mortgage-backed securities at issue, has formally objected to the proposed settlement. Read more about these developments from the [Insurance Journal](#) and [Bloomberg.com News](#).

A federal judge presiding over claims involving the British Petroleum oil spill in the Gulf of Mexico has ruled that private plaintiffs can seek punitive damages against BP and related parties based on their economic loss and destruction of property. At present, hundreds of lawsuits and thousands of claims against BP are pending in relation to the April 2010 Gulf oil spill. U.S. District Court Judge Carl Barbier concluded that federal maritime law and federal statutes addressed to land use and oil pollution pre-empt state law, resulting in dismissal of state law claims. Maritime law allows for punitive damages, while the Oil Pollution Act of 1990, enacted in the wake of the Valdez disaster, allows for recovery of indirect economic losses. [Click here for more information.](#)



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