

Bernstein Shur Business and Commercial Litigation Newsletter

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We are pleased to present the seventh edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight articles and links addressed to the effective use of forum selection causes, as well as other developments that will have an impact on business and commerce. We hope that you enjoy the Newsletter.

In the News:

The Second Circuit dismissed an antitrust case against Google, Inc., based on a forum selection clause requiring participants in its AdWords program to bring suits only in California. A forum selection clause is a provision in a contract that specifies the location or forum where disputes between the parties must be resolved. In the case, which was resolved through summary order, a three-judge panel determined that the forum selection clauses were valid and that dismissal of the action brought by AdWord participants was appropriate. [Read the Forbes article here](#).

The United States Supreme Court affirmed a judgment against Microsoft for infringement of patents owned by i4i Inc. that were used in its Microsoft Word suite. At the trial court level, i4i obtained judgment based on Microsoft's use of its technology that allows users to change the content of documents and create custom XML documents. On appeal, Microsoft argued, without avail, that the standard for holding companies liable for patent infringement should be made less stringent by applying a lower standard of proof to patent invalidity defenses. The Supreme Court rejected Microsoft's argument, stating that that clear-and-convincing evidence standard that was enacted by Congress would still apply. [Read the IT World Canada article](#). See the [Supreme Court's decision here](#).

South Carolina has joined the handful of states that have enacted laws limiting tort remedies available to plaintiffs. Under the new law, punitive damages for tort claims are capped at the greater of \$500,000, or three times compensatory damages. In instances where it is established that a defendant had an improper motive of financial gain or conduct rises to the level of felony conduct, punitive damages can be increased to the greater of \$2 million, or four times the amount of compensatory damages. Read what the [Charleston Regional Business Journal](#) had to say.

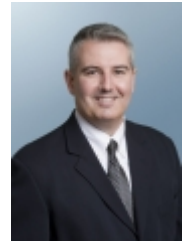
The Federal Trade Commission has announced that 450,000 borrowers will share in a \$108 million settlement with Countrywide Mortgage, which allegedly overcharged borrowers when they defaulted on their mortgages. The settlement, which affects nearly one percent of all U.S. mortgage holders, comes in the wake of allegations that the lender routinely overcharged customers from 2005 through 2008. [Click here to read about the settlement on Reuters.com](#).



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