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This edition of the Bernstein Shur Business and Commercial Litigation Newsletter marks our second year of publication. This month we highlight news related to litigation pleading standards, the SEC's newly adopted policy regarding admissions of liability in securities fraud settlements, and mandatory arbitration of consumer credit card disputes. Happy New Year to all our readers. We hope you enjoy the newsletter.

Paul McDonald
Chairman
Litigation Practice Group
207 228-7260
pmcdonald@bernsteinshur.com

Daniel Murphy
Shareholder
207 228-7120
dmurphy@bernsteinshur.com

In the News:

A U.S. District Court concludes that the heightened civil pleading standards under *Bell Atlantic v. Twombly* apply with equal force to affirmative defenses. In 2007, the U.S. Supreme Court announced a new pleading standard for federal civil cases, requiring that a plaintiff's complaint include sufficient factual information to make the claims plausible, not merely possible or conceivable. In an order issued by Magistrate Judge John J. O'Sullivan of the Southern District of Florida, the court held that affirmative defenses asserted in a defendant's answer also are subject to the heightened *Twombly* standard. In particular, the court faulted defendants for pleading only bare conclusions and failing to provide a factual statement of support. If followed by other courts, this standard would represent a significant departure from current pleading practice. Access the order here.

The U.S. Securities and Exchange Commission alters its settlement policies for certain securities fraud cases, stating that companies will not be able to state that they neither admit nor deny civil charges when they already have admitted criminal liability. The policy change comes in the wake of a decision by Judge Jed Rakoff of the U.S. District Court for the Southern District of New York in which the court rejected a proposed settlement between the SEC and Citibank, and severely criticized the SEC's practice of settling cases without requiring any admission of wrongdoing. The SEC's new policy does not affect settlements where parallel criminal charges do not exist. Read more about this development here.

Continuing a trend of decisions upholding mandatory arbitration clauses in consumer contracts, the U.S. Supreme Court rules that certain consumer credit card claims must be resolved by arbitration, rather than in court. In *CompuCredit Corp. and Synovus Bank v. Greenwood*, the plaintiffs asserted that a 1996 law, the Credit Repair Organization Act, expressed a policy of barring arbitration of certain consumer credit card claims and therefore trumped the parties' contractual agreement to arbitrate disputes. The U.S. Supreme Court disagreed, and held that consumer credit claims under the act must be resolved by arbitration, rather than through court proceedings. The court's decision follows a similar decision issued in April, 2011, in which the court expressed its approval of mandatory arbitration provisions in AT&T's consumer agreements. This decision provides further comfort to businesses in knowing that their contractual arbitration clauses will be enforced by the courts. Read more about this decision here.