

## NEWSLETTERS

### Barnes & Thornburg LLP Commercial Litigation Update -February 2016

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Welcome to the February 2016 edition of the Commercial Litigation Update, an e-publication that features articles authored by the attorneys in Barnes & Thornburg LLP's Commercial Litigation Practice Group. To read an article from this month's edition of the Commercial Litigation Update e-newsletter, click on the hyperlinks in the article titles below.

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#### Force Majeure Clause Can't Save a Company from its Own Bad Deal

By Kara Cleary

With increased severe weather events and acts of terrorism, force majeure clauses have garnered more attention and importance during contract negotiations. However, these clauses have limitations. Read about how the recent decision in *Kyocera Corporation v. Hemlock Semiconductor, LLC* serves as a good reminder that a force majeure clause is not intended to rescue a sophisticated business entity from its own bad, unprofitable deal.

#### Cost-Effective Litigation Strategies: Three Lessons from a Barnes & Thornburg Victory

By Kenneth Gorenberg

Our client filed a multi-million dollar lawsuit for literally hundreds or even thousands of mistakes by a service provider. How could the litigation be pursued cost-effectively? Learn how Georgia Operators Self Insurers Fund (Georgia Fund) received a \$2.4 million award for claims mishandling and the strategies that helped to achieve the result in a way that made economic sense.

#### Two Recent Indiana Contract Cases Discuss Parol Evidence Issues

By Laura Gorman

When interpretation of a written contract is in dispute, Indiana courts apply the "four corners rule," also known as the "parol evidence rule," to determine the intent of the parties in entering into the contract. Here we

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explore two recent decisions where the Indiana Court of Appeals analyzed the effects of this rule in interpreting the intent of contracting parties, and whether the exceptions were appropriate given the language of written agreements.

## **Supreme Court Finds an Unaccepted Offer for Complete Relief Does Not Moot Individual or Class Claims, But Leaves the Door Ajar**

By David Frazee and Adeyemi O. Adenrele

In a 6-3 decision, the United States Supreme Court ruled in *Campbell-Ewald Co. v. Gomez* that an unaccepted complete settlement offer under Rule 68 of the Federal Rules of Civil Procedure, which helps parties reach a settlement and avoid litigation, does not moot a named plaintiff's claim in a class action lawsuit. Learn more about the background and debate on this case, how its impacting other cases, and how ambiguity left open by the Supreme Court could have this issue back to it again in short order.

## **Preventing Your Agreed Protective Order from Interfering with Jury Research**

By Dennis P. Stolle and Alexander P. Orlowski

Most complex commercial and intellectual property cases involve the discovery of internal business documents and information. To keep sensitive information confidential, litigants typically obtain protection against public disclosure of their proprietary information, designating materials as "confidential" or "Attorney Eyes Only" pursuant to a protective order. Is it possible, however, to conduct meaningful jury research if the protective order prohibits showing mock jurors the key documents in the case? Read this article to explore real-world examples and a helpful checklist for how to resolve the challenge of conducting meaningful jury research while preserving the confidentiality of sensitive business information.

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