

NEWSLETTERS

Barnes & Thornburg LLP Commercial Litigation Update - September 2013

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Welcome to the September 2013 edition of the *Commercial Litigation Update*, an e-publication that features articles authored by the attorneys in Barnes and Thornburg LLP's Commercial Litigation Practice Group.

Discovery from Data Storage Providers: Building a Silver Lining into Your Cloud Storage Contract

By Meredith Thornburgh White

Many companies use cloud technology, especially cloud storage providers, to reduce IT management costs and rid themselves of the headache of overseeing the software and hardware needed to perform certain services internally, while gaining the ability to expand quickly. But, handing your data over to a third-party does not come without a price. Savvy litigants are beginning to head straight to these third-party cloud providers to subpoena corporate records during discovery. Learn more about the problems this practice can post to data owners and helpful tips for negotiating with your cloud provider to protect your data during litigation.

Jim Abeska

Challenges to Arbitration Awards Carry a High Risk of Sanctions

By Timothy J. Abeska

A recent case in front of the U.S. Court of Appeals for the Seventh Circuit affirmed a district court's confirmation of an arbitration award of damages and judgment for attorneys' fees. The opinion discusses the difficult burden faced by a losing party who "cannot resist the urge to try for a second bite at the apple." The Court further stated "that challenges to commercial arbitral awards bear a high risk of sanctions."

Subjective vs. Objective – Beliefs Matter for Fiduciaries of Delaware Limited Liability Partnerships and Limited Liability Companies

The Delaware Supreme Court recently clarified when a contractual fiduciary duty imposes a subjective, rather than an objective, standard for determining the appropriateness of a fiduciary's actions. Under Delaware law, limited liability companies and limited partnerships are allowed—subject to the strictures of Delaware's Limited Liability Company Act ("LLC Act") and its Revised Uniform Limited Partnership Act ("RULPA")—to contractually modify or eliminate traditional fiduciary duties

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of loyalty, care, and candor. Read more about the Court's recent opinion.

Decision on Elusive “Inevitable Disclosure” Doctrine Underscores Key Steps to Protect Company Information

By William Nolan and Thomas Gallo

Companies in all states should take note of the Georgia Supreme Court's decision earlier this year in *Holton v. Physician Oncology Services, LP*, 292 Ga. 864 (2013). The case rejected the doctrine of inevitable disclosure of trade secrets as an independent basis for enjoining an employee from going to work for a competitor. Where recognized, the inevitable disclosure doctrine provides the ability to enjoin an employee from working for a competitor even in the absence of a non-compete agreement or any demonstrated bad acts by the departing executive such as taking the past employer's information. Learn more about why this decision is a good occasion for businesses to ensure they are aware of the doctrine of inevitable disclosure.

About Us

Barnes & Thornburg's commercial litigators advocate our clients' rights in a wide variety of areas at both the trial and appellate levels in state and federal courts throughout the United States. We also represent clients in alternative methods for resolution of disputes outside the courtroom, through negotiation, mediation, and arbitration. We provide nationwide coordination of litigation for several Fortune 500 clients and we advise clients with respect to litigation prevention, insurance, and claims-management systems.

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