ARNOLD & PORTER LLP

Lit Alerts

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In This Issue:

Missed Appeal Deadline Shows Firms Need Careful Monitoring

A recent decision by a federal district court in Texas serves as a powerful reminder that law firms must carefully and constantly monitor their clients' case developments. In *Two-Way Media LLC v. AT&T Operations, Inc.*, the U.S. District Court for the Western District of Texas denied a motion by AT&T for an extension to appeal a 2013 verdict that it infringed patents owned by Two-Way Media LLC. The motion deadline had passed in December 2013, but 18 lawyers from AT&T's outside counsel missed the deadline because of allegedly ambiguous email docket notices. According to AT&T, the lawyers only realized in January 2014 that all post-trial motions had been resolved in November 2013, triggering the 30-day period for filing an appeal. The district court, however, held that was not an excuse, and declined to grant AT&T an extension to appeal. The court held that "it is not sufficient for attorneys to rely on the electronic and email notifications received from the [Electronic Case Files] system, as the docket entries and notifications do not always convey the court's disposition in its entirety . . . . The substance of the orders carry validity under the law, not the electronic [filings]." AT&T's appeal of the district court's decision is currently pending in the United States Court of Appeals for the Federal Circuit.

E-Discovery Costs: Comments Submitted On Proposed Changes To Rule F.R.C.P. 37(e)

The January Lit Alerts summarized the proposed changes to Rule 37(e) relating to electronic discovery. The public comment period for the proposed changes to the Federal Rules, including Rule 37(e), closed on February 15 and over 2,250 comments were received. On February 14, 2014, 309 corporate entities submitted a letter to the Advisory Committee on Civil Rules praising certain proposed changes to address "the burdens of both over-preservations and overboard discovery." For Rule 37(e), the entities suggested that the proposed change should be revised to "clarify that an award of sanctions requires a showing of specific intent to deprive another party of discoverable information, and that the threshold for 'curative measures' requires a showing of specific prejudice to a party to the litigation."

CAFA Mass Action Removal: Ninth Circuit Grants Rehearing En Banc in Romo to Determine Whether Coordinated Actions Can Be Removed

In the October 2013 edition of Lit Alerts, we discussed the Ninth Circuit's decision in *Romo v. Teva Pharmaceuticals USA, Inc.*, No. 13-56310 (Sept. 25, 2013). In *Romo*, the Ninth Circuit held that a plaintiff's petition for coordination of state actions pursuant to California Code of Civil Procedure section 404 did not constitute a proposal for the actions to be "tried jointly," and that removal to federal court was therefore not authorized under CAFA. Last month, the Ninth Circuit granted rehearing en banc in *Romo*, perhaps signaling disapproval of the three-judge panel's decision. In any event, the Ninth Circuit has cautioned that the panel opinion in *Romo* "shall not be cited as precedent by or to any court of the Ninth Circuit."

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