

BSA Secures Half-Million Dollar Settlement with Texas Software Firm

By Christopher Barnett

The Business Software Alliance (BSA) [announced](#) on February 6, 2012 that it has signed a settlement with [PCS-CTS](#), a Houston-based company providing supply-chain software solutions. Under the settlement, PCS-CTS agreed to pay the BSA a total settlement of \$500,000.00 to settle claims that the company had unlicensed copies of Adobe, Filemaker, Microsoft, and Symantec software installed on its computers. The BSA's announcement indicates that the amount of the settlement is the largest ever reached with a Texas-based business.

Many of our clients seek to avoid the negative publicity associated with software-audit settlements by negotiating the inclusion of confidentiality clauses in written settlement agreements with auditing entities. The BSA (along with its competitor industry group, the Software & Information Industry Association (SIIA)) typically resist efforts to include any language in those agreements that would limit their ability to publicize the settlements. However, in our experience the auditors usually end up agreeing to prohibitions against the kind of press release issued by the BSA in return for additional amounts to be paid to settle the matters.

There is no way to know whether the subject of confidentiality ever was raised during the PCS-CTS settlement negotiations as our firm was not involved in this case. Given the size of the settlement amount, even if PCS-CTS did raise the issue, it is possible that the BSA refused to consider any publicity restrictions in this matter. However, in almost every BSA settlement negotiation it is important to raise the confidentiality demand clearly and early in the process. The BSA especially values the ability to issue press releases (especially press releases regarding noteworthy settlements), and raising the issue late in the game can complicate efforts to resolve the audit. Also, it is important to keep in mind the fact that while the BSA usually gives the audited business advance notice of a planned release, it almost never accepts substantive revisions to the release that would tend to obscure the magnitude of the settlement or to call into question the BSA's tactics or enforcement program. Therefore, it is vital that an audited business carefully determine the value of such a prohibition after receiving a settlement demand from the BSA and decide how far it wants to go in demanding that a confidentiality clause be included in the settlement agreement.



About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher's practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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