

## Bernstein Shur Business and Commercial Litigation Newsletter

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We are pleased to present the third edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight articles and links addressed to the limits of personal jurisdiction, patent law reform, and other developments that will have an impact on business and commerce. We hope that you enjoy the Newsletter.

### In the News:

**The United States Supreme Court recently heard oral arguments on the limits of personal jurisdiction over foreign manufacturers that target the United States for sale of their products.** In the case *J. McIntyre Machinery v. Nicastro*, the Supreme Court will decide whether an individual who was injured by a machine manufactured by a British company can proceed with his suit against that company. Although the manufacturer itself did not have targeted presence in the plaintiff's forum state of New Jersey, the Plaintiff has argued that placing products in the stream of commerce through a nationwide-distributor was sufficient for purposes of establishing personal jurisdiction. The case provides the Supreme Court with an opportunity to revisit the standards for establishing personal jurisdiction over foreign manufacturers against the backdrop of a modern economy. Oral argument was also held on the same day in the case, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, which implicates many of the same issues related to personal jurisdiction and global commerce..

[Click here for more information regarding the \*Nicastro\* case.](#)  
[Click here for more information regarding the \*Brown\* case.](#)

**The full Senate is expected to vote on the Patent Reform Act of 2011, a significant overhaul of U.S. patent law that is said to have strong bipartisan support.** Among other items, the bill would provide judges with the discretion to determine the importance of a particular patent, such that the infringement of a minor patent would not lead to a large damage award. The bill also adopts the first-to-file system, rather than the first-to-invent, which tends to favor companies that apply for patents in different countries. Finally, the bill also seeks to curtail the recent wave of qui tam false patent marking lawsuits that have been filed in the past year, limiting standing to actions filed by the U.S. government or to actual competitors that can establish competitive injury based on false marking of patents. At present, any individual can commence an action on behalf of the United States government for false patent marking.

[Click here for an article from \*Insurance Journal\* regarding this topic.](#)  
[Click here for an article from \*Reuters\* regarding this topic.](#)

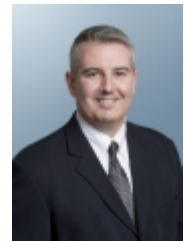
**The I.R.S. has increased scrutiny of owner compensation for pass through subchapter S corporations.** In a case pending in the U.S District Court, Southern District of Iowa, the I.R.S. sought and obtained judgment against the owner of an S corporation who allegedly drew considerable distributions, while at the same time receiving a very modest salary. Although this arrangement did not affect the owner's income tax liability, it did result in significantly less FICA payroll tax, which the IRS found objectionable. The article reports that the Court ultimately re-characterized dividend payments as wages and that the Defendant expects to appeal judgment.

[Click here for complete article.](#)



**Paul McDonald**  
Chairman

Litigation Practice Group  
207 228-7260  
[pmcdonald@bernsteinshur.com](mailto:pmcdonald@bernsteinshur.com)



**Daniel Murphy**  
Shareholder  
207 228-7120

[dmurphy@bernsteinshur.com](mailto:dmurphy@bernsteinshur.com)

**The Second Circuit has upheld the dismissal of a lawsuit by broker-dealers claiming that they were misled in the merger that created FINRA, the self-regulating body for the securities industry.** In the wake of the formation of FINRA, which was created through the merger of the National Association of Securities Dealers and NYSE Regulation, certain brokers received modest payouts in relation to their approval of the merger. Following multi-million dollar bonuses paid to FINRA executives, several brokers filed suit in a bid to unwind the merger. The Second Circuit dismissed their suit, holding that FINRA, as quasi-governmental self-regulatory organization, enjoyed absolute immunity from suit. .

[Click here for the complete article.](#)