

Bernstein Shur Business and Commercial Litigation Newsletter**June 2011 | Issue 6**

We are pleased to present the sixth edition of the Bernstein Shur Business and Commercial Litigation Newsletter. This month, we highlight articles and links addressed to private securities fraud claims and jurisdictional issues, as well as 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 narrows the class of potential defendants in private securities fraud cases based on SEC Rule 10b-5. In *Janus Capital Group, Inc. v. First Derivative Traders*, No. 09-525 (U.S. June 13, 2011), the Supreme Court held that Rule 10b-5, which impliedly creates a private right of action for making “untrue statement[s] of a material fact” in relation to the purchase or sale of securities, did not extend to a wholly-owned subsidiary of a mutual fund that provided “substantial assistance” in relation to the statements at issue. [See the Bloomberg.com News report here](#). In support of its decision, the Court noted that the subsidiary defendant did not maintain ultimate authority over the statement, including its content and whether and how to communicate it. Without “control” over the false or misleading statements, the Court held that the investment advisor subsidiary could not be held liable under Rule 10b-5. [Click here for the Supreme Court’s opinion](#).

In a case addressed to the limits of jurisdiction over foreign defendants, the United States Supreme Court rules that foreign subsidiaries of Goodyear Tire and Rubber cannot be sued in a North Carolina state court based on an accident that occurred in France. Asserting that a defective Goodyear tire manufactured in Europe contributed to the accident in France, Plaintiffs brought suit in North Carolina. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76 (U.S. June 27, 2011), the high court determined that the foreign subsidiaries of Goodyear lacked the kind of continuous and systematic business contacts necessary to support jurisdiction in North Carolina courts in relation to the matter. [Read the Bloomberg.com News report](#). [Click here for the Supreme Court’s opinion](#).

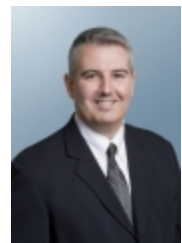
The United States Supreme Court rules that generic drug makers are not liable under state tort law for failing to provide more extensive warning labels than those provided by the original manufacturer of the copied brands. Federal laws require generic drugs to use the same labels as those on the brand that are copied. In *Pliva, Inc. v. Mensing*, No. 09-003 (U.S. June 23, 2011), the Supreme Court determined that state law claims seeking to impose higher duties on the generic drug makers were pre-empted by federal law and unavailable. [Click here for the Supreme Court’s opinion](#) or read the [article in the Star Tribune](#).

State of Texas enacts a law adopting the “English Rule,” which requires that the losing party in a civil action to pay the attorneys’ fees of the prevailing party. The “loser pays” system, now the law of Texas, represents a significant departure from the “American Rule,” in which each side bears its own attorney fees in the absence of statutory or contractual authority. The new law also permits a trial court to dismiss frivolous lawsuits on an expedited basis. [Read the article in The Southeast Texas Record](#).



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