Morrison on the Impacts of McIntyre on Minimum Contacts

Alan B. Morrison, who is the Lerner Family Associate Dean for Public Interest & Public Service at the George Washington University Law School, has published The Impacts of *McIntyre* on Minimum Contacts in Arguendo, the online version of the *George Washington Law Review*.

> *The Supreme Court's June 2011 decision in J. McIntyre Machinery, Ltd. v. Nicastro seriously unsettles the law of personal jurisdiction in suits against manufacturers of dangerous products that are delivered, through a distributor, to the jurisdiction where the product harmed a person using it. The plurality opinion not only failed to satisfy its stated goal of clarifying the law twenty years after Asahi Metal Industry Co. v. Superior Court, but has set the stage for a significant increase in litigation at the preliminary stage when personal jurisdiction defenses are supposed to be resolved. Both the plurality and the concurrence placed great emphasis on the lack of a factual showing of the defendant's minimum contacts with the forum state, which will almost certainly lead plaintiffs to undertake substantial nonmerits discovery of the defendant and, in cases like this, the distributor and the employer of the injured plaintiff. Although McIntyre involved a non-U.S. defendant, its rationale also applies when the product maker is from another state, thereby substantially increasing the ability of U.S. companies to avoid suits in jurisdictions where the injured plaintiff resides. The focus on physical contacts with the forum state also suggests that obtaining personal jurisdiction over those whose contacts with the forum state exist only via the Internet will be even less likely than under the current state of the law. And the plurality's suggestion that the solution may lie in Congress conferring broad territorial jurisdiction upon the federal courts where there is diversity of citizenship raises the possibility of a significant increase in personal injury suits in federal district court to avoid personal jurisdiction issues, even where the state court is literally across the street and all the issues involce state law.*

The article can be freely downloaded here.