

# ALERT

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## SUBROGATION AND RECOVERY

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### **Personal Jurisdiction over Foreign Defendants Under the Supreme Court's Recent Decision *J. McIntyre Mach., Ltd. v. Nicastro***

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Although recovery professionals often assert that the movement of goods from a foreign manufacturer to domestic consumers – sometimes referred to as “the stream of commerce” – allows one to maintain jurisdiction over a foreign defendant in a state, the U.S. Supreme Court's decision in *J. McIntyre Mach., Ltd. v. Nicastro*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2780 (2011) (plurality op., Kennedy, Roberts, Scalia, Thomas, JJ. & Breyer & Alito, JJ., concurring in judgment) may limit the ability to rely upon the stream of commerce argument.

In a stream of commerce case, the assertion to maintain jurisdiction is that the foreign defendant placed a product into the stream of commerce that ultimately caused harm to a plaintiff inside the specific state where the action is being pursued. However, under *J. McIntyre*, placing a product into the stream of commerce, without more, may no longer support jurisdiction over a foreign defendant. *J. McIntyre* involved a products liability action in which the plaintiff was injured by the defendant's machine in New Jersey, but the machine was manufactured abroad, the defendant did not purposely direct itself to the New Jersey market, the defendant did not have a New Jersey office, the defendant did not pay taxes or own property in New Jersey, and the defendant did not advertise or send employees to New Jersey.

In *J. McIntyre*, the majority of the Supreme Court found that the plaintiff's assertion of jurisdiction based on the stream of commerce was insufficient. A plurality of the Court — a

majority of the majority of the Court who agreed on the decision — held that a defendant's placement of goods into the stream of commerce supports the exercise of jurisdiction only when the defendant targeted the state. Two of the justices who concurred in the decision were critical of the plurality's holding, noting that the plurality did not consider the realities of how products are sold in modern times through the use of intermediaries and the Internet. Moreover, the dissenting opinion written by Justice Ginsburg was also critical of the plurality and commented that manufacturers who engaged international business are not unfairly required to defend actions in the United States because it was a reasonable cost of transacting business internationally.

If you are contemplating a recovery action against a foreign defendant, it is necessary to review the Supreme Court's decision in *J. McIntyre* and the current status of the law in this area, as well as determine how the courts in the state in which you are pursuing your case have treated the plurality's decision.

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*To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact Joseph F. Rich at [jrich@cozen.com](mailto:jrich@cozen.com) or 215.665.7285*

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