

The Spotlight

JENNER & BLOCK Litigation Monitor

July 2010

Volume 2 • Issue 7

Litigation Department

Jenner & Block's Litigation Department is comprised of 330 litigators in offices in Chicago, Los Angeles, New York and Washington DC. The Litigation Department is organized in the following practice groups:

[Antitrust Litigation](#)
[Appellate & Supreme Court Practice](#)
[Bankruptcy Litigation](#)
[Class Action](#)
[Communications](#)
[Complex Commercial Litigation](#)
[Creative Content](#)
[Election Law and Redistricting](#)
[Employment Litigation](#)
[Environmental Litigation](#)
[ERISA Litigation](#)
[Government Contracts](#)
[Health Care Litigation](#)
[Insurance Litigation and Counseling](#)
[Intellectual Property](#)
[International Arbitration](#)
[Media and First Amendment](#)
[Product Liability and Mass Tort Defense](#)
[Professional Responsibility](#)
[Real Estate and Construction Litigation](#)
[Reinsurance Practice](#)
[Securities Litigation](#)
[Technology Litigation](#)
[Unfair Competition/False Advertising/Lanham Act](#)
[White Collar Criminal Defense & Investigations](#)

Message from the Co-Chairs of the Litigation Department

In this edition of *The Spotlight*, we discuss a number of significant developments, notably the Complex Commercial Litigation section includes a decision of the Delaware Chancery Court holding that shareholders cannot inspect books and records after filing a derivative lawsuit (*King*) and a district court's decision in the Eastern District of North Carolina holding that backup tapes do not need to be restored due to undue burden (*Martinez-Hernandez*). In Electronic Discovery, we report on an award of sanctions by a district court in the Southern District of New York for electronic data lost on a failed flash drive (*Wilson*).

We address a number of important developments, including several actions taken by the United States Supreme Court as it wrapped up its 2009-2010 term. In Arbitration and Products Liability, we highlight the Supreme Court's grant of *certiorari* to address preemption (*AT&T Mobility* and *Williamson*). Additionally, in Privilege, we report that the Supreme Court declined to review the First Circuit's work product ruling in the *Textron* matter and in Complex Commercial Litigation, the Court resolved a circuit split concerning the scope of the comity doctrine with respect to alleged discriminatory state taxes (*Levin*).

Additionally, in Health Care Litigation, we discuss the DOJ's guidance on utilizing corporate monitor agreements. The International Bar Association's new Rules of Evidence are addressed in the International Arbitration section. In Internal Investigations, we report on an award of punitive damages after a party falsely implicated another in an internal investigation (*Coster*) and the Massachusetts Supreme Judicial Court's rejection of collective knowledge as a basis for corporate criminal liability (*Life Care Centers of America, Inc.*).

Regards,

David J. Bradford and **Craig C. Martin**

Co-Chairs Jenner & Block Litigation Department

In This Issue

Senior Editor, **Barbara S. Steiner** and Issue Editor, **Kenyanna M. Scott**

Antitrust Litigation

- *President Signs Bill Extending "Detrebling" Provisions for Leniency Participants.* [more...](#)

Appellate & Supreme Court

- *Seventh Circuit Holds That Error Using ECF While Filing Notice of Appeal Does Not Deprive Appellate Court of Jurisdiction.* [more...](#)
- *D.C. Circuit Holds, En Banc, That Suit Arising Out of 1998 U.S. Bombing of Sudan Is Barred By Political Question Doctrine.* [more...](#)

Arbitration

- *U.S. Supreme Court Grants Certiorari To Address Issue Of Arbitration Preemption.* [more...](#)
- *Don't "Look Through" Dispute To Compel Arbitration Based On Diversity.* [more...](#)
- *Court, Not Arbitrator, Is To Decide Unconscionability Challenge To Arbitration Clause.* [more...](#)

Attorney-Client Privilege

- *U.S. Supreme Court Denies Cert In Textron Work Product/Tax Work Papers Case.* [more...](#)
- *Leaving Privileged Information On Third Party Computer Waived Privilege.* [more...](#)
- *Documents Prepared Without Involvement Of Counsel Are Work Product.* [more...](#)
- *Privilege Waived For Failure To Comply With Order's Timing Requirements.* [more...](#)

Class Action

- *Seventh Circuit Permits Limited Certification Of Consumer Fraud Class Action.* [more...](#)
- *Amended Complaint Dropping Class Allegations Does Not Defeat CAFA Jurisdiction.* [more...](#)

Complex Commercial Litigation

- *Supreme Court Resolves Circuit Split Concerning Scope of Comity Doctrine.* [more...](#)
- *Party Does Not Waive Right To Interest By Failing To Request It.* [more...](#)
- *Supplemental Jurisdiction Statute Applies To Permissible Counterclaims.* [more...](#)
- *Shareholders Cannot Inspect Books and Records After Filing Derivative Suit.* [more...](#)

Electronic Discovery

- *Sanctions Awarded For Data Lost On Failed Flash Drive.* [more...](#)
- *No Need To Restore Back-Up Tapes Due To Burden.* [more...](#)
- *\$10,000 Monetary Fine Imposed For Spoliation And Failure To Issue Litigation Hold.* [more...](#)

ERISA Litigation

- *Supreme Court Allows Attorney's Fees Under ERISA If Party Establishes "Some Success On The Merits"* [more...](#)
- *Sixth Circuit Allows Equitable Estoppel Claims Under ERISA In "Extraordinary Circumstances"* [more...](#)

Litigation Department News

Firm Secures \$61.7 Million Verdict for Dow Chemical Company [more...](#)

Jenner & Block Team Secures Significant Victory for Pro Bono Asylum Client [more...](#)

Supreme Court Rules in Favor of Firm's Client in First Amendment Case [more...](#)

In The Firm

AmLaw Names Jenner & Block Nation's Top Firm for Pro Bono for Third Year [more...](#)

Legal 500 Recognizes Eighteen Jenner & Block Attorneys in 2010 Edition [more...](#)

Health Care Litigation

- *DOJ Issues Guidance On Utilizing Corporate Monitor Agreements.* [more...](#)
- *Supreme Court Declines To Review Punitive Damages Appeal.* [more...](#)

Insurance & Reinsurance

- *HELD: 5th Circuit: D&O Insurer must continue to pay defense costs until it proves to court that exclusion applies.* [more...](#)

International Arbitration

- *No "Immediate Need for Relief" Required to Confirm Partial Award.* [more...](#)
- *Non-signatory Bound by Equitable Estoppel to Arbitrate Claims.* [more...](#)
- *Revised IBA Rules of Evidence Approved.* [more...](#)

Product Liability

- *Supreme Court Agrees To Hear Preemption Appeal.* [more...](#)
- *Alabama Supreme Court Examines Applicability Of Rule Of Repose.* [more...](#)
- *California Court Of Appeal Applies Component Parts Doctrine.* [more...](#)

Professional Responsibility & Ethical Developments

- *Federal Circuit Reverses \$4.4 Million Sanctions Order In Patent Case.* [more...](#)
- *Missouri Supreme Court Reverses Attorney's Criminal Contempt Conviction.* [more...](#)

Securities Litigation

- *SEC May Pursue Sox Claw Back Payments From CEO With No Knowledge Of Alleged Wrongdoing.* [more...](#)
- *SEC Charges Diebold And Former Executives With Accounting Fraud And Obtains Bonus Payments From CEO Under SOX Section 304.* [more...](#)

White Collar Defense & Investigations

- *World Bank Debars U.K. Company For Improper Payments In Sudan.* [more...](#)
- *Massachusetts Court Rejects Conviction Based On Collective Knowledge.* [more...](#)
- *Falsely Implicating Another In Investigation Results In Punitive Damages.* [more...](#)



Barbara S. Steiner

Partner

In The Spotlight: Attorney Profile

Barbara S. Steiner is Co-Chair of the Firm's *Complex Commercial Litigation* Practice and a member of the Firm's Management Committee. She is also one of partners who are heading up the Firm's *Real Estate Finance Litigation and Workout Task Force*, and she is the Senior Editor of this newsletter. Ms. Steiner leads the Firm's longstanding relationship with client General Electric. She has tried a number of high-profile cases for GE, including first-chairing a case against DirecTV that resulted in a \$133 million jury verdict, then the largest jury verdict in Connecticut history, which the court increased to a \$181 million judgment. She has also been lead trial counsel in high stakes cases for other Fortune 500 companies in state and federal court and arbitration venues throughout the U.S. In recognition of her outstanding service to clients, Ms. Steiner has been named one of the Top 50 Female Illinois "Super Lawyers" and Top Business Litigators by *Law & Politics* magazine, and is among the Leading Business Lawyers in Antitrust law, the "Top 100 Leading Women Lawyers in Illinois," and one of the "Top 100 Leading Women Business Lawyers in Illinois," according to the Leading Lawyers Network, and she has been recognized by *Lawdragon Magazine* as one of the "3000 Leading Lawyers in America." Ms. Steiner feels very fortunate to have been practicing at Jenner for many years, as the litigation has always been cutting-edge, her colleagues both exceptionally talented and collegial, and the commitment to pro bono is part of the Firm's DNA.