O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

# ATTORNEY MCBRIDE SECURES DISMISSAL OF CLIENT FROM CLASS ACTION

On May 20, 2010, the Wisconsin Court of Appeals affirmed a lower court ruling dismissing Nissan Motor Co., Ltd. ("Nissan Japan") from a price-fixing class action venued in Milwaukee County for lack of personal jurisdiction under Wisconsin's long-arm statute, Wis. Stat. § 801.05. The class action involved anti-trust claims against various automobile manufacturers and their North American subsidiaries for allegedly conspiring to maintain new car prices in the United States at levels higher than in Canada for the same vehicles and as part of the conspiracy, further arranged for the United States dealers not to honor warranties on cars imported from Canada. The plaintiff claimed that the circuit court had jurisdiction over Nissan Japan because it had "directly or through [its] subsidiaries, affiliates or agents" conducted business in Wisconsin through Nissan dealerships located in the state.

After a period of jurisdictional discovery, the circuit court determined that Wisconsin did not have personal jurisdiction over Nissan Japan and that exercising jurisdiction over the foreign corporation would violate Due Process. The court of appeals affirmed the dismissal of Nissan Japan, agreeing with Attorney McBride's argument that the foreign corporation was not subject to general jurisdiction under Wisconsin law based solely on the acts of its wholly owned subsidiary, Nissan North America, under an agency theory. Similarly, the court of appeals also determined that specific jurisdiction over Nissan Japan was not warranted under the long-arm statute, where there was no evidence in the record that the class action arose out of an injury to persons or property in Wisconsin based on an out-of-state action by Nissan Japan.

The court of appeals further rejected an alternative argument advanced by the plaintiff related to the scope of jurisdictional discovery conducted prior to the circuit court's dismissal of Nissan Japan, holding that the plaintiff was not denied his right to an evidentiary hearing when the circuit court ordered the plaintiff to direct his jurisdictional discovery requests to Nissan North American rather than Nissan Japan. The parties had entered into a series of stipulations related to jurisdictional facts and the plaintiff had stated that he did not seek any further discovery from Nissan Japan.

Attorney McBride is a former law clerk to Wisconsin Supreme Court Justice Jon P. Wilcox (ret.) and provides counsel to clients dealing with appellate issues in both state and federal court. A full copy of the opinion can be found here, along with an article from Law360 discussing the

appellate decision.