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Business

AUSTRALIA

Government Intervention in Contracting: Recent Developments

[Murray Thornhill, Esq. and Daniel Morris, Esq.](#)

[HHG Legal Group](#)

West Perth, Australia

For small businesses looking to enter the construction market, the hurdles can appear insurmountable. How can a small to medium sized company contend with the buying power, connections and reach of international Goliaths? Should we rely on commercial enterprise to self-regulate the market or do we seek our government's intervention?

[Full Article](#)

CANADA

Dissenting Shareholders -- FAQ

[Houser Henry & Syron LLP](#)

Toronto, Canada

If you are a minority shareholder who is dissatisfied with a major decision or a majority shareholder contemplating a major change, you should be aware of a powerful remedy called the right of dissent.

Shareholders resolutions are passed by a majority or two thirds of the voting shareholders of the Corporation. The voting threshold required to pass a resolution is outlined in the Ontario Business Corporations Act ("OBCA") and changes depending on the subject matter.

Typically, once a resolution is passed, the business is concluded and the shareholders who voted against the resolution have no further recourse.

[Full Article](#)

NETHERLANDS

Art and Law: The Importance of a Consignment Agreement

[Paul W.L. Russell, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Why is it so important to conclude a sound consignment agreement? In what cases can such an agreement be helpful?

In consignment sales the owner of a work of art appoints an intermediary to sell a work of art at a price previously determined and to then hand over the sales proceeds to the owner. The intermediary (usually an art dealer or other professional) will be reimbursed for this transaction. Generally, the owner hands over the work of art to the intermediary yet without transferring the ownership of it.

[Full Article](#)

NETHERLANDS

Good Governance: The End of Anonymous Shares?

[Reinier W.L. Russell, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

A new bill provides far-reaching measures to end the anonymity of shareholders in NVs (public limited companies) that are not listed. What are the consequences for shareholders and companies?

Bearer Shares

NVs can issue two types of shares: registered shares and bearer shares. Bearer shares are not registered in the name of the shareholder and easily transferrable to any other individuals. The person who "bears" the share (hence: "bearer") will be considered as the owner of the share.

[Full Article](#)

Consumer Finance Protection

UNITED STATES

Bad System Conversion Leads to CFPB Consent Order for Prepaid Card Provider and Vendor

[Caren D. Enloe, Esq.](#)

[Smith Debnam Narron Drake Saintsing & Myers, LLP](#)

Raleigh, North Carolina

The CFPB continues to flex its muscle and expand its reach, this time punishing a prepaid

card provider and its vendor for a conversion to a new system that did not go as planned. The consent order, which was entered into without any admission of liability, requires UniRush and its vendor/payment processor to pay an estimated \$10 million in restitution to affected consumers and a civil monetary penalty of \$3 million.

[Full Article](#)

UNITED STATES

CFPB Seeks Feedback on Proposed Third Party Debt Collection Rules

[Jerry T Myers, Esq.](#)

[Smith Debnam Narron Drake Saintsing & Myers, LLP](#)

Raleigh, North Carolina

Last Fall, I joined a group of colleagues for a meeting with the CFPB to discuss its proposed rules for third party debt collection. I was one of four attorney members of the National Creditors Bar Association in attendance. Joining us were representatives from the American Collectors Association and the Debt Buyers Association. The CFPB had invited us to meet with them following their Small Business Review Panel discussion a couple of months earlier.

[Full Article](#)

Cybersecurity & Data Protection

UNITED STATES

Manage Your Vendors: Tanium Used Live Sensitive Hospital Data in Sales Demonstrations Over Three Years

[Kenneth Rashbaum, Esq.](#)

[Barton LLP](#)

New York, New York

In what W.S. Gilbert may have called a most unusual paradox, the *Wall Street Journal* (subsc. may be required) reported on April 20, 2017 that security services consultancy Tanium had been using live, sensitive data of one of its customers, El Camino Hospital, in sales demonstrations from 2012-2015, and had posted some of those demonstrations on YouTube. There is as yet no indication of regulatory action with regard the sufficiency of the hospital's oversight of its information security vendor, but the disclosure of the incident is less than forty-eight hours old.

[Full Article](#)

Insurance

UNITED STATES

Conclusory Allegations Do Not Give Rise to Bad Faith

[Thomas Paschos & Associates, PC](#)

Haddonfield, New Jersey

In *Williams v. State Farm Fire & Cas. Ins. Co.*, No. 16-9028, 2017 U.S. Dist. LEXIS 50261 (D.N.J. Apr. 3, 2017), Plaintiffs sought coverage under their homeowners' insurance policy

issued by State Farm for property damage sustained in a fire loss on January 12, 2016.

State Farm denied coverage and Plaintiffs' filed a Complaint alleging that Defendant's refusal to pay benefits breached the insurance policy. Plaintiffs also alleged that Defendant breached the duty of good faith and fair dealing in processing Plaintiffs' homeowner's claim.

[Full Article](#)

Labor & Employment

IRELAND

GDPR and HR - Are You Ready!

[Linda Hynes, Esq.](#)

[Leman Solicitors](#)

Dublin, Ireland

In the UK, the Information Commissioner is consulting on draft guidance regarding consent under the new General Data Protection Regulation (GDPR). The whole issue of consent will be very important under the new regime particularly from a HR perspective.

Most contracts of employment contain a standard consent clause regarding employee data protection processing. Under GDPR these blanket consents are unlikely to continue to stand up.

[Full Article](#)

IRELAND

Mandatory Retirement Ages to be Abolished

[Linda Hynes, Esq.](#)

[Leman Solicitors](#)

Dublin, Ireland

A bill, known as the Employment Equality (Abolition of Mandatory Retirement Age) Bill 2016 and proposed by Sinn Fein, will now go to a Dáil committee. The bill proposes to abolish mandatory retirement ages in employment in Ireland. The principle in the bill has not been opposed by government and the Dáil committee will now decide on next steps.

[Full Article](#)

NETHERLANDS

Personnel: Non-Competition Clause and Non-Solicitation Clause--Write It Down!

[Jan Dop, Esq.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Employers often wish to make a non-competition and/or non-solicitation clause applicable on their employees. The law requires such a clause to be agreed upon "in writing". What does this mean exactly?

Clauses restricting an employee's opportunities to work for a new employer or start his or her own business after the termination of an employment contract must be agreed upon in writing by the employer and the employee of age. The reason for such a clause to be agreed

upon in writing is that the employee must be able to thoroughly consider the consequences of this onerous clause.

[Full Article](#)

NETHERLANDS

Personnel: Your Obligations With Regard to Sick Employees?

[Roos Inklar, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

What are your obligations, as an employer, if one of your employees has been off work sick for a long term?

Has one of your employees been off work sick for a long period? During the first two years of illness, you, as an employer, have different obligations with regard to the employee, including:

- Maintaining the employment contract
- Continuing to pay wages of the employee
- Making efforts for the re-integration of the employee.

[Full Article](#)

UNITED STATES

Comp Time: The OTHER Form of Overtime Compensation

[David B. Watson, Esq.](#)

[Christian & Small LLP](#)

Birmingham, Alabama

For years we have fielded a question about overtime from our clients: "Why can't I give an employee time off instead of paying them overtime?" The answer always been "Because the law doesn't allow it." Soon we may have a different answer.

[Full Article](#)

UNITED STATES

Any Time FMLA Leave is Given "Negative Weight," It is Illegal Retaliation

[Thomas Paschos & Associates](#)

Haddonfield, New Jersey

In *Egan v. Delaware Port Authority*, 851 F.3d 263 (3d. Cir (Pa.) March 21, 2017), Plaintiff, Egan, worked for the Port Authority as a Projects Manager for Special Projects from 2008 through 2012. In March 2012, Egan was transferred on special assignment to the Engineering Department. Egan suffered from migraine headaches and claimed that the frequency of his migraines increased with his transfer to the Engineering Department. When he began experiencing migraines, he requested intermittent FMLA leave. While he was on FMLA leave, Egan was informed that all "economic development functions" were being eliminated, his "temporary reassignment" to the Engineering Department was "deemed completed," and he was terminated (along with another employee).

[Full Article](#)

UNITED STATES

LAD Back Pay Award Could Not Be Offset by Unemployment Compensation Benefits **Thomas Paschos & Associates**

Haddonfield, New Jersey

In *Acevedo v. Flightsafety International Inc.*, - A.3d -, 2017 WL 8752812017 (N.J. A.D. March 6, 2017), plaintiff, Rex Fornaro, a flight instructor, filed a disability discrimination and retaliatory discharge claim against his employer, defendant Flightsafety International, Inc. At trial, the jury found that Flightsafety fired Fornaro because he is disabled and because he requested reasonable accommodation for his disability. The jury awarded Fornaro back pay of about \$83,000, but the trial judge reduced the award by \$14,000, which represents one half of the unemployment compensation Fornaro had received since his termination. The trial judge reasoned that because both Fornaro and Flightsafety had contributed to the state unemployment fund, reduction by half was the equitable result.

[Full Article](#)

UNITED STATES

EEOC Provides Guidance Outlining Protections for Applicants and Employees With Mental Health Conditions

Connie Elder Carrigan, Esq.

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Raleigh, North Carolina

Last December, the United States Equal Employment Opportunity Commission (EEOC) issued an informal resource document which serves to remind employers of protections afforded to applicants and employees who suffer from mental health conditions. The document, titled: Depression, PTSD, and Other Mental Health Conditions in the Workplace - Your Legal Rights addresses workers' rights to protection from discrimination and harassment on the basis of mental health, privacy of mental health information, and the requirement that employers explore whether reasonable accommodations may be made to enable the applicant or employee to perform his or her job duties.

[Full Article](#)

Oil & Gas

UNITED STATES

The Landowner and Setback Requirements for Oil and Gas Activities: **Act 13 Protects Rights of Landowners When it Comes to Setbacks**

Paul R. Yagelski Esq.

Rothman Gordon

Pittsburgh, Pennsylvania

In February 2012, the Pennsylvania Oil and Gas Act was enacted into law. This law is also known as Act 13. Act 13 amended Title 15 of the Pennsylvania Consolidated Statutes by re-codifying portions of the repealed Oil and Gas Act of 1984 and by adding new provisions organized into three new parts and six new chapters relating to oil and gas development in

[Full Article](#)

Real Estate & Leasing

NETHERLANDS

Leasing/Letting: Do Bank Guarantees Still Provide a Guarantee for the Lessor?

[Ynze Kliphuis, LL.M.](#)

[Russell Advocaten B.V.](#)

Amsterdam, Netherlands

Banks can no longer recover the amount they guarantee via a bank guarantee from the estate in the event the lessor goes bankrupt. What are the consequences for lessors and lessees?

The Bank Guarantee as a Form of Security

In lease agreements, the lessee usually provides a security for fulfilling his obligations against the lessor. In commercial leases, bank guarantees are commonly used. A bank guarantee is an agreement between the bank and the lessor. The lessee does not pay?

[Full Article](#)

Intellectual Property & Trademarks

HONG KONG

Applying for Trade Mark Protection in Multiple Jurisdictions (Part II):

The Madrid System to be Implemented in Hong Kong in 2019

[ONC Lawyers](#)

Hong Kong, Hong Kong

In "Applying for Trade Mark Protection in Multiple Jurisdictions (Part I): the Madrid System", we introduced international registration of trade marks and discussed the advantages and weaknesses of such registration under the Madrid System. The Intellectual Property Department of Hong Kong (the "IPD") conducted a three-month consultation exercise on the proposed application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") to Hong Kong in November 2014.

[Full Article](#)

UNITED STATES

Trademark Security Check Point - Draining the Swamp With Random Audits of Trademark Use

[Elizabeth Isaac, Esq.](#)

[Dunlap Coddling](#)

Oklahoma City, Oklahoma

Despite flying with TSA pre-check, random checks in airport security lines seem to be a thing for me. Just last week, a TSA officer randomly wiped down all of my electronics with what looked like a fat piece of litmus paper and then stuck the paper into a futuristic machine for

further analysis. Lucky for me, I carry honest electronics.

On March 21, 2017, the USPTO will begin randomly checking declarations of use, not looking to find what trademarks owners possess but instead looking to crack down on what trademark owners are lacking. The USPTO recently published a final rule (82 Fed. Reg. 6259) establishing a random audit program to ensure that trademark owners attempting to renew their trademark registrations are indeed using their trademarks in connection with every good and/or service in what may be a laundry list of goods or services in a single class. So, if you own a trademark registration that identifies multiple goods or services in a single class, be prepared to submit additional evidence of your mark being used in connection with any one of the goods or services identified in your registration.

[Full Article](#)

Trusts and Wills

AUSTRALIA

Timely Government Review of NSW Trust Law

[Selwyn Black, Esq.](#)

[Carroll & O'Dea Lawyers](#)

Sydney, Australia

The NSW Attorney General recently announced that the NSW Law Reform Commission (Commission) will be reviewing certain aspects of the law of trusts in NSW. The Commission will consider whether laws should be introduced to:

1. limit the liability of beneficiaries to indemnify trustees or creditors of a trust, if the trustees fail to meet the obligations of the trust;

[Full Article](#)

AUSTRALIA

Landholder Duty Payable After Appropriation Under a Will

[Selwyn Black, Esq.](#)

[Carroll & O'Dea Lawyers](#)

Sydney, Australia

The recent decision of *Tay v Chief Commissioner of State Revenue* [2017] NSWSC 338 shows some of the potential tax liabilities that beneficiaries of an estate can be exposed to.

The Key Facts

1. Tee Peng Tay (Deceased) died leaving an estate valued at over \$1.7 billion SGD.
2. The Deceased owned shares in three private companies, including 60% of the shares (Shares) in Memocorp Australia Pty Ltd (Memocorp). Other members of his family owned the remaining 40%. Memocorp was an Australian company and a landholder for the purposes of the Duties Act 1997 (NSW) (Duties Act).

[Full Article](#)



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- Access to free Primerus educational webinars
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Resources

Legal Articles

Compendiums:

- [A Survey of the Law of Legal Malpractice - A Professional Liability Practice Group Compendium - September 2015](#)
- [A Survey of The Law of Non-Contractual Indemnity and Contribution - Products Liability Practice Group Compendium - April 2015](#)
- [Compendium of Principles of Law Regarding Bad Faith in the Fifty States and D.C. - 2013 Edition](#)
- [A State by State Update of Tort Reform - 2013 Edition](#)
- [Principles of Law Regarding Establishment and Operation of a Business in Various Countries Compendium - International Transactional Services Practice Group - March 2012](#)
- [Doing Business in the Asia Pacific Region](#)

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