



Primerus

X P R E S S

Corporate Client e-Newsletter

November 2015

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Business

AUSTRALIA

Crowdfunding Legislation Update

By: [David Callaghan, Esq.](#) & [David Williams, Esq.](#)

Mullins Lawyers

Brisbane, Australia

In our February 2015 Business edition (Issue No. 5) we reported on the Corporations and Markets Advisory Committee's (CAMAC) discussion paper proposing changes to the Corporations Act 2001 given the increased popularity in crowd sourced equity funding. Since then we have had a change in leadership and as a result Bruce Billson has been replaced by Kelly O'Dwyer as the Minister for Small Business.

[Full Article](#)

NETHERLANDS

Art Dealer Held Accountable for Incorrect Information by an Internet Auction House on the Provenance of a Forged Sculpture

By: [Paul Russell, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

How can you prevent, as an art seller, that you will be held liable when a person who acts on your behalf gives incorrect information on a work of art?

In a case the Arnhem Court of Appeal has recently decided on, an art dealer had commissioned an auction house to auction 71 works of art, including a sculpture by the French artist Edgar Degas. The sculpture by Degas was not sold during the auction but after the auction, when a private art collector - a great fan of the Degas oeuvre, as he said himself - bought the sculpture. The buyer requested the auction house whether "provenance" was available with regard to the sculpture by Degas, the answer of the auction house was positive and the buyer was told that he would receive it later. However, the buyer never received the provenance and the sculpture turned out to be a fake.

[Full Article](#)

NETHERLANDS

Good Governance: Who's liable - the Legal Entity or the Directors

By: [Reinier W.L. Russell, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

A legal entity may only participate in economic or social life if represented by natural persons. Generally, these are the board or director(s). How do you know who's authorised to represent a legal entity and what can you do if directors representing a legal entity are not authorised to do so?

Representation means that legal acts, which have consequences with regard to external legal relationships, are attributed to the legal entity (such as NV, BV, Vereniging (association), Stichting (foundation)). These legal acts include concluding contracts, placing orders, and banking. The rule of law is that the legal entity shall be represented by the board.

Representative authority can also be vested in persons other than directors. This subject will be dealt with in another newsletter.

[Full Article](#)

UNITED STATES

Veterinary Medical Board (VMB) - Understanding the VMB's "Cite and Fine" Program

By: [Thomas G. Redmon, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

What is the "Cite and Fine" Program?

The Veterinary Medical Board's "Cite and Fine" Program was first implemented in 1990 to aid in the processing of complaints made against veterinarians. These guidelines are used to address violations of the law that are not serious enough to warrant criminal prosecution or the suspension or revocation of a veterinarian's license to practice. In these cases, the VMB issues a citation, and the veterinarian must pay a fine.

[Full Article](#)

UNITED STATES

Explanation of Legal Duties for California Veterinarians

By: [Daniel L. Baxter, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

Veterinarians have a number of duties to satisfy in order to comply with the requirements of the law. Some of these duties include...

[Full Article](#)

Construction

AUSTRALIA

Oral Building Contract - is it enforceable?

By: [Mark Madsen, Esq.](#)

Mullins Lawyers

Brisbane, Australia

Section 67G of the Queensland Building and Construction Commission Act 1991 (Qld) provides that a building contractor who enters into a building contract that is not put in writing commits an offence. In the recent case of Nichols -v- Earth Spirit Home Pty Ltd, the Queensland Court of Appeal was asked to consider whether, as a consequence of that provision, an oral building contract was unenforceable.

[Full Article](#)

UNITED STATES

Recovery of Economic Loss from a Design Professional by a Contractor

By: **Michael T. Terwilliger, Esq.**

Whitten Law Office

Indianapolis, Indiana

Economic losses include inadequate value, costs of repair and replacement of the defective work and consequent loss of profits.¹ These losses are contract-type losses amounting to disappointed commercial expectations and are distinct from personal injury or property damage.² In the construction context, when the project proves to be more expensive than anticipated by the contractor, the contractor may seek to recover its losses from the architect or engineer by alleging defects in the design, inefficiencies or interferences during the administration of the work and the like. Whether such economic losses are recoverable in actions by contractors against design professionals³ if negligence can be proved is an issue that has been subject to debate throughout the country for decades.

[Full Article](#)

Intellectual Property & Technology

HONG KONG

Could the Shape of Kit Kat's Chocolate-coated Wafer Be Registered as a 3D Trade Mark?

ONC Lawyers

Hong Kong, Hong Kong (SAR)

The recent decision of Société des Produits Nestlé SA v Cadbury UK Ltd (Case C-215/14) of the Court of Justice of the European Union ("CJEU") of 16 September 2015 has clarified to some extent the requirement of distinctiveness in three-dimensional trade mark applications.

Société des Produits Nestlé SA ("Nestlé") filed an application with the United Kingdom Intellectual Property Office (the "UKIPO") to register a three-dimensional sign representing the shape of a four finger chocolate-coated wafer as a trade mark (the "Trade Mark"), in respect of certain goods in class 30 (including e.g. "chocolate"). The shape of the Trade Mark is the basic shape of Nestlé's product "Kit Kat", which has almost been entirely unchanged since 1935, except that the Trade Mark does not include the embossed words "Kit Kat" or sections of the oval shape which form part of the "Kit Kat" logo, as illustrated.

[Full Article](#)

Labor and Employment

HONG KONG

Keep Calm If the Database of Personal Data Is Being Hacked!

ONC Lawyers

Hong Kong, Hong Kong (SAR)

Companies and organizations have to collect and keep the personal data of their employees, customers or members etc. for administration and business purposes. They are regarded as the "Data User" under the Personal Data (Privacy) Ordinance ("the Ordinance"). Therefore, they have to ensure the security of the personal data handled by them. However, in case of an attack by hackers or accidental loss of personal data, they shall still keep calm and take the appropriate actions in order to mitigate the loss and damage.

[Full Article](#)

UNITED STATES

TTD Benefits in Kentucky: No Longer what the Legislature Intended

By: **Primerus Workers' Compensation Practice Group**

Contributed By: **Scott M. Brown, Esq.** & **Johanna F. Ellison, Esq.**

Fowler Bell PLLC

Lexington, Kentucky

We are at a crossroads in Kentucky on the issue of temporary total disability (TTD) benefits and when it is appropriate to pay them versus getting an employee back to work. In one direction we have an interpretation of our statute that may forever alter the meaning of TTD and defeat the purpose of return-to-work programs (and with it, one of the primary purposes of workers' compensation). There are two cases pending before the Kentucky Supreme Court that stand at this intersection: they can either turn down this path, or restore the clear meaning of "temporarily totally disabled" and, with it, the equilibrium of our system.

[Full Article](#)

UNITED STATES

How do you handle an Identical Worker's Compensation Claim being pursued in more than One Jurisdiction?

By: [Jason J. Hoy, Esq.](#)

Whitten Law Office

Indianapolis, Indiana

For those engaged in the defense of worker's compensation claims, sometimes one comes across the situation where an injured worker wants to pursue benefits for the same injury in more than one state. This usually involves the situation where an injury occurs in one state, but the employer is located, or the injured worker resides, in a different state. For instance, a truck driver working for Company A is injured while dropping a load of goods off in a state that is outside of Company A's location and/or the driver's state of residence. Not surprisingly, the injured worker often wants to maximize his /her recovery and sometimes benefits in one state are more generous than those available under another state's worker's compensation system. However, jurisdictions handle this situation differently.

[Full Article](#)

UNITED STATES

The EEOC Determines That Discrimination Based on Sexual Orientation Violates Title VII

By: [Bianca S. Watts, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination on the basis of sex. The U. S. Equal Employment Opportunity Commission ("EEOC") is the federal agency charged with enforcing Title VII's prohibition of employment discrimination on the basis of sex, and it recently determined that prohibited sex discrimination under Title VII includes discrimination based on "sexual orientation."

[Full Article](#)

UNITED STATES

Overview of Employment-Related Legal Issues Faced by Veterinarians

By: [Stephen K. Marmaduke, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

As a veterinarian with a complex practice, you can be subject to a number of different employment laws. Failure to follow these laws can result in expensive, traumatic incidents that have the power to destroy the practice you have worked so hard to build. To prevent these problems, you should take the time to familiarize yourself with the various employment-related legal issues that may affect your practice. Some of these laws include:

[Full Article](#)

[Professional Liability](#)

UNITED STATES

Plaintiff Cannot Bring Direct Cause of Action Against Doctor for Failure to Have Proper Insurance

By: [Thomas Paschos, Esq.](#)

Thomas Paschos & Associates, P.C.

Haddonfield, New Jersey

In *Jarrell v. Kaul*, (A-42-13) (072363), (N.J. Sup. Ct. September 29, 2015), plaintiff James Jarrell, who suffered from chronic back pain, was referred to defendant Dr. Richard A. Kaul, a board certified anesthesiologist who practiced at defendant Market Street Surgical Center (MSSC). In October 2005, Dr. Kaul performed a spinal fusion procedure on Jarrell. Following the surgery, Jarrell experienced new pain in his left side that worsened over time and led to a "drop foot." In January 2006, Jarrell was examined by a board certified neurosurgeon, who concluded that the pain and drop foot were caused by Dr. Kaul's improper placement of some screws that pinched a nerve. At the time of the October 2005 procedure, Dr. Kaul had a malpractice insurance policy that specifically excluded spinal surgery. Although he claimed to have \$500,000 in liquid assets, he did not have a letter of credit in that amount. The Board of Medical Examiners (BME) revoked Dr. Kaul's license to practice medicine in 2012.

[Full Article](#)

Real Estate

AUSTRALIA

New Environmental Laws Come in to Effect

By: [Rebecca Castley, Esq.](#)

Mullins Lawyers

Brisbane, Australia

Amendments to the Environmental Protection Act 1994 (EPA), which were passed on 28 October 2014, came into effect on 30 September 2015.

The stated objective of the new changes is to reduce "green tape" for businesses. The 2014 reforms introduce a range of changes, including:

- streamlining the permits required to transport contaminated soil;
- clarifying when a person has a duty to notify of environmental harm;
- establishing new "end of waste" codes; and
- increasing penalties for offences.

[Full Article](#)

HONG KONG

Can I Claim Any Beneficial Interest in a Property If I Fund My Family Member to Purchase the Property?

[ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

Because of the high property prices in Hong Kong nowadays, it is not uncommon that when a child wants to purchase a property, the down payments may actually be paid by his/her parents without any written documents recording the parents' beneficial interest in the property. When family relationship turns sour or the child gets into financial difficulty, his/her parents may be anxious to claim back beneficial interest in the property by claiming that the child holds his/her interest in the property on trust for his/her parents. In such circumstances, the Court will consider, on a case-by-case basis, the intention between the parties at the time of the acquisition of the property to ascertain whether a common intention constructive trust exists. In a recent case of *Yip Yuk Kwong v Yip Chun Yin* HCMP 2552/2014, the father succeeded in establishing that the son held his interest in the property on trust for the father.

[Full Article](#)

NETHERLANDS

3 Differences between Renovation and Maintenance in Lease

By: [Ynze Kliphuis, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

Buildings may be timeless but every now and then work will have to be carried out in order to prevent decay. Lessees and lessors have different rights and duties, depending on whether the work can be considered as renovation or (urgent) maintenance.

[Full Article](#)

NETHERLANDS

Amsterdam Holds Back New Hotels in the City Centre

By: [Ynze Kliphuis, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

The city of Amsterdam is to call a halt to the development of new hotels in the city centre in 2016, officials told the *Financieele Dagblad*. What are the consequences for hotels intending to set up business in Amsterdam?

[Full Article](#)

UNITED STATES

Surface Use or Land Use Agreements

By: [Paul R. Yagelski, Esq.](#)

Rothman Gordon

Pittsburgh, Pennsylvania

You, the landowner, own the oil and gas rights to your property and you have leased these rights. Can you get anything other than a bonus and a royalty?

You do not own the oil and gas rights to your property. These rights are owned by someone else and they have been leased. The lessee now wants to come onto your land to develop the oil and gas rights. Are you entitled to any compensation?

The answer to both questions is yes. Additional compensation can be obtained through a surface use agreement; sometimes referred to as a land use agreement. This article will address both of these questions, and it will do so within the context of what a surface use agreement or land use agreement is.

[Full Article](#)

Primerus Fall Membership Directory

The NEW [Primerus Membership Directory](#), which was recently published and mailed to over 35,000 Primerus members and clients worldwide is now available.

Paradigm Magazine



The Primerus Paradigm delivers articles regarding developments and trends in legal issues relevant to corporate clients around the world, while showcasing Primerus members as leaders with the expertise to assist clients with any legal needs they may have. It is published twice a year and mailed to Primerus members as well as clients around the world.

If you would like to be added to our hard copy mailing list please include your mailing address in a brief email to Derek Hoeft at dhoeft@primerus.com

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[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](#)

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We seek out, accept and retain only the best firms for membership. Each firm is screened to ensure its commitment to excellence as embodied in the Six Pillars: Integrity, Excellent Work Product, Reasonable Fees, Continuing Legal Education, Civility and Community Service. After more than 20 years, in which Primerus has experienced tremendous growth in membership and expansion of services, we have never wavered from this commitment, and we never will.

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