



## Corporate Client e-Newsletter

January 2016

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#### Resources:

[Email Subject Lines that Work Best, those to Avoid, and the Best Time to Send](#)

Leading email campaign provider Adestra has released a report revealing which keywords in email subject lines cause higher open rates and which ones cause more unsubscribes than average. ([Read More](#))

[Primerus Fall Membership Directory](#)

The [Fall 2015 Primerus Membership Directory](#) is a useful tool that makes it easy for you to find one of Primerus' high quality law firms around the world.

[Paradigm Magazine](#)

The [2015 Fall Paradigm Magazine](#) provides in-house counsel and corporate executives with diverse geographical and legal substantive articles written by Primerus attorneys worldwide.

## Upcoming Webinar

# "Protecting Yourself from Consumer Claims in Auto Lending"

This Webinar is presented by the Primerus Business Law Institute and offered through WestLegalEdCenter

**Date/Time: Tuesday, February 23rd at 3:00 pm ET**

Consumer claims against banks and auto dealerships arising from vehicle financing have increased and have caught the eye of the Consumer Financial Protection Bureau (CFPB). Individual and class action lawsuits seek enhanced damages, injunctive relief and attorney fees under state consumer protection laws and the CFPB has started the process of creating regulations for auto lenders. No bank or auto dealership is safe from these lawsuits or the potential scrutiny of the CFPB. Banks and dealerships can, however, take steps to reduce the impact of consumer demands and respond to inquiries from the CFPB.

This webinar will provide an overview of common issues that arise from vehicle financing, steps to take to avoid them arising or, if suit is filed, to effectively respond to a lawsuit, and what to do if confronted with an inquiry or administrative action (from the CFPB).

**[Click Here for More Information and to Register](#)**

*No Cost to Primerus Members and Guests*

## Business

### **AUSTRALIA**

**Business: Significant and Premium Investor Visa Update - Change is a constant**

**By: [Tony Hogarth, Esq.](#)**

**Mullins Lawyers**

**Brisbane, Australia**

The new Complying Investment Framework (CIF) for Significant Investor Visas (SIV) and Premium Investor Visas (PIV) was announced by the Government on 15 May 2015. In order to cater for the transition of the CIF, the Government suspended new nominations for SIVs between 24 April 2015 and 30 June 2015. The new framework commenced on 1 July 2015.

**[Full Article](#)**

### **NETHERLANDS**

**Good Governance: Power of Attorney for a Non-director**

**By: [Thomas Schutte, Esq.](#)**

**Russell Advocaten B.V.**

**Amsterdam, Netherlands**

*A legal person is, in principle, represented by the management board. Authority of representation can also be conferred to other parties than the management board and directors. When are non-directors permitted to represent a legal person? What are the consequences of unauthorized representation?*

A legal person has to be represented, for instance, to be able to conclude contracts, conduct legal proceedings, or to purchase or encumber real estate. Other parties than the directors (see our newsletter Good governance: Who's liable - the legal entity or the directors?) may also represent the legal entity pursuant to the articles of association of the legal person or by granting authorisation.

**[Full Article](#)**

## **UNITED STATES**

### **Succession/Exit Planning for Family-Owned and/or Other Closely Held Businesses**

By: **Roger J. Brothers, Esq.**

**Buchman Provine Brothers Smith LLP**

**San Francisco, California**

Why should small and family-owned businesses concern themselves with succession planning? The answer is relatively simple. Statistically, only about thirty percent (30%) of all family businesses survive into the second generation. According to recent data, two-thirds (2/3) of such businesses reported not being immediately prepared to fill a vacancy at the top of their organization in the event of an unanticipated occurrence (i.e., death, disability, sudden retirement, etc.).

**[Full Article](#)**

## **Healthcare**

## **UNITED STATES**

### **Beyond the Text: Restricted Knox-Keene License**

By: **Christine M. Collins, Esq.**

**Wilke, Fleury, Hoffelt, Gould & Birney, LLP**

**Sacramento, California**

Health care service plans licensed under the Knox-Keene Health Care Service Plan Act of 1975, as amended, (the "Knox-Keene Act") are categorized as either full-service or specialized health care service plans. A full-service license is issued to an entity that provides, at minimum, six basic health care services (e.g., physician services, inpatient hospital services, home health services, etc.). Examples of full-service health care service plans include Kaiser and HealthNet. A specialized license is issued to an entity that provides health care services in a single area such as dental, vision, or mental health. One such example is Vision Service Plan (VSP).

**[Full Article](#)**

## **UNITED STATES**

### **Failure to Conduct an Appropriate HIPAA Risk Analysis Can Cost You!**

By: **Anthony R. Eaton, Esq.**

**Wilke, Fleury, Hoffelt, Gould & Birney, LLP**

**Sacramento, California**

*A \$750,000 settlement recently paid by a large physician practice group highlights how important it is for organizations to regularly conduct proper HIPAA risk assessments.*

The Cancer Care Group (based in Indiana) allegedly failed to protect electronic patient data ("ePHI") as required by the Health Insurance Portability and Accountability Act's ("HIPAA") Security Rule. The Group's compliance issues arose after an employee's laptop bag containing unencrypted electronic patient data was reported stolen out of the employee's car. According to the resolution agreement between the Group and the Office of Civil Rights ("OCR"), the Group failed to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of its ePHI. As a result, the Group did not implement appropriate and effective policies and procedures to govern the receipt and removal of computer hardware and electronic media containing ePHI into and out of the Group's facility. This failure led to the improper disclosure of ePHI related to approximately 55,000 individuals and an agreement to pay \$750,000 to resolve the OCR's allegations. The Group was also required to enter a three year Corrective Action Plan to come into compliance with HIPAA.

**[Full Article](#)**

## **UNITED STATES**

### **Expect Increased Focus on HIPAA Audits in 2016**

By: **Andrew J. Weissenberg** (*law clerk - bar admission pending*)

**Iseman, Cunningham, Riester & Hyde LLP**

**Albany/Poughkeepsie, New York**

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) recently criticized the HHS Office of Civil Rights (OCR) for ineffective enforcement of HIPAA privacy standards and security breach reporting requirements. In response, the OCR promised enhanced oversight and the launch of the second phase of its audit program in the year ahead. Before 2015 came to a close, the OCR made good on this promise by announcing three major HIPAA settlements that exceed \$5 million combined. All three originated from breach reports filed with the OCR, and a key deficiency in all three was the failure to conduct an acceptable risk analysis.

**[Full Article](#)**

## Insurance

### UNITED STATES

#### **Upon Rescission for Material Misrepresentation, Insurers Need Not Defend or Indemnify Insured**

**By: Thomas Paschos, Esq.**

**Thomas Paschos & Associates, PC**

**Haddonfield, New Jersey**

In *Thomas DeMarco v. Sean Robert Stoddard*, D.P.M., 2015 N.J. LEXIS 1237 (N.J. December 1, 2015), Defendant Sean Robert Stoddard, D.P.M. practiced podiatry in New Jersey. In 2007, he applied to the RIJUA for medical malpractice liability insurance. Among other representations, the application indicated that at least fifty-one percent of Dr. Stoddard's practice was generated in Rhode Island. That answer was false. Dr. Stoddard submitted renewal applications from 2008 through 2011, each of which stated that at least fifty-one percent of Dr. Stoddard's practice was generated in Rhode Island.

**[Full Article](#)**

## Intellectual Property & Technology

### UNITED STATES

#### **IT/Computer Malpractice: Not All "Professionals" are Created Equal**

**By: Stephen B. Sambol, Esq.**

**Mateer & Harbert, P.A.**

**Orlando, Florida**

As most businesses have come to completely rely upon computers and the internet and thereby those professionals who design or consult on software or computer systems and networks, it is likely just a matter of time before we begin seeing more claims involving professionals who work in this industry. When a mistake is made by an IT consultant the damage caused can be significant. This might include a security breach or accidental disclosure of health information (PHI) protected by Federal laws like HIPAA or personally identifiable information (PII) or non-public information (NPI) protected by the Federal Information Security Act as well as state laws. Or perhaps even worse, portions or all of a system can be corrupted and data can be lost and rendered unrecoverable. Consequential damages can end up being substantial for the company in terms of jury awards, litigation costs, penalties, lost revenue and loss of business and reputation. Whether you find yourself representing a person or business that has been damaged or defending the IT consultant accused of causing the damage you need to be aware of limitations in the law that might affect the ability to bring certain types of professional liability claims for those losses.

**[Full Article](#)**

### HONG KONG

#### **Applying for Trade Mark Protection in Multiple Jurisdictions (Part I): The Madrid System**

**[QNC Lawyers](#)**

**Hong Kong, Hong Kong (SAR)**

The trade mark registration system in Hong Kong and most other jurisdictions only confers territorial protection. For instance, a Hong Kong-registered trade mark (other than a well-known trade mark) will not be afforded protection in Taiwan to the same extent as trade marks registered there. In order to have its trade mark rights comprehensively protected, it is most often recommended for a trade mark owner to apply for registration in every jurisdiction where its business interests lie or could potentially lie. International registration through the Madrid System is a means designed to facilitate such multi-jurisdictional trade mark registration.

**[Full Article](#)**

### NETHERLANDS

#### **Protect your Reputation on Social Media**

**By: Reinier W.L. Russell, Esq.**

**Russell Advocaten B.V.**

**Amsterdam, Netherlands**

*A good reputation is precious, both in the corporate world and your private life. However, after a dispute a reputation can be damaged quickly by social media content and negative information on the Internet. So what can you do to prevent this?*

It's impossible to imagine life today without social media use. People use, for instance, Twitter and Facebook to share their joys and sorrows. Social media can also be used for business in many positive ways. On the

other hand, social networking can also have a negative impact. Throwing dirt at someone can result in serious reputation damage, when, for instance, a customer makes negative comments about your products on Facebook. To prevent this, it's prudent to include a social media clause in your contracts.

[Full Article](#)

## Labor and Employment

### AUSTRALIA

#### **Employer's Liability for "Domestic" Duties**

**By:** [Cameron Seymour, Esq.](#)

**Mullins Lawyers**

**Brisbane, Australia**

Work is work and domestic duties are domestic duties, right? What if work duties include domestic tasks? There are many jobs performed by domestic cleaners where the type of work performed is exactly of the sort performed by those workers in their own home, such as scrubbing floors, making beds, vacuuming etc. There are jobs involving a hybrid of administrative/domestic tasks, such as office juniors whose tasks include cleaning office kitchens etc. So how could an employer be liable for an injury suffered by a worker performing what appears to be a day-to-day household task?

[Full Article](#)

### UNITED STATES

#### **Employee Misclassifications: A Warning to Employers**

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

**Wilke, Fleury, Hoffelt, Gould & Birney, LLP**

**Sacramento, California**

The U.S. Department of Labor Wage and Hour Division ("WHD") issued official guidance on how to determine whether a worker is an employee or an independent contractor under the federal Fair Labor Standards Act ("FLSA"). The WHD is the federal agency that administers and enforces the FLSA. A six-factor economic realities test is used to make this determination, including whether:

- the work performed is an integral part of the employer's business;
- the worker's managerial skill affects the worker's opportunity for profit or loss;
- the worker is retained on a permanent or indefinite basis;
- the worker's investment is relatively minor as compared to the employer's investment;
- the worker exercises business skills, judgment, and initiative in the work performed; and
- the worker has control over meaningful aspects of the work performed.

[Full Article](#)

### UNITED STATES

#### **First Circuit Court of Appeals Gives Managers a Trial on Their FLSA Overtime Lawsuit**

**By:** [Peter Bennett, Esq.](#) & [Frederick B. Finberg, Esq.](#)

**The Bennett Law Firm, P.A.**

**Portland, Maine and New Hampshire**

Many employers assume that paying a manager a significant salary and having that person manage two or more employees is enough to exempt the manager under the executive exemption from the overtime pay requirements of the Fair Labor Standards Act (FLSA). However, to be exempt, the manager must have management as a primary duty and must be able to influence or have authority over personnel decisions. Overtime exemption claims are expensive to defend since they tend to be fact intensive. In addition, depending upon the state, these claims can go back as far as six years with exposure for back pay, liquidated (multiple) damages, interest and attorneys' fees. A recent decision from the United States Court of Appeals in Boston highlights the potential for these cases to occur.

[Full Article](#)

### UNITED STATES

#### **Companies Contracting with Employment Agencies Can Be Held Liable for Temporary Employees' Discrimination Claims**

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

**Thomas Paschos & Associates, PC**

### ***Haddonfield, New Jersey***

In *Faush v. Tuesday Morning*, 2015 U.S.App.LEXIS 19977 (3d. Cir. Pa. November 18, 2015), Matthew Faush, an African American was an employee of Labor Ready, a staffing company that provides temporary employees to clients, including Tuesday Morning, Inc. Faush was sent by Labor Ready to work at a new Tuesday Morning store.

[Full Article](#)

## **Lending**

### **NETHERLANDS**

#### **Lending Art Benefits and Risks**

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

**Russell Advocaten B.V.**

**Amsterdam, Netherlands**

*Corporate art collections, private individuals and museums lend art to one another. This involves benefits for both parties, however, there are also risks involved in lending art.*

One benefit of lending art may be that the owner may include the exhibition to the "provenance" (history) of the work of art and that new, positive aspects will be discovered during the preparation of an exhibition or that there may be an upward effect on the value of a work of art.

[Full Article](#)

## **Planning**

### **AUSTRALIA**

#### **Statutory Guideline for Substantially Different Development - Not so Substantial**

**By:** [Anthony O'Dwyer, Esq. & James Deegan, Esq.](#)

**Mullins Lawyers**

**Brisbane, Australia**

Difficulties often arise for applicants and assessment managers where an applicant is seeking to make changes to a development application or approval.

Changes may be made to applications or approvals when the proposed change will constitute a minor change (to a development application) or a permissible change (to a development approval) without having to restart the development approval process, however a change will be neither minor nor permissible if the change results in a *substantially different development*.

[Full Article](#)

## **Real Estate**

### **AUSTRALIA**

#### **Talk or Action? Brisbane City Council Flags Incentives for Retirement Villages and Aged Care**

**By:** [Stuart Lowe, Esq.](#)

**Mullins Lawyers**

**Brisbane, Australia**

Brisbane Lord Mayor, Graham Quirk, has revealed that the Council is considering incentives to encourage more retirement villages and aged care facilities to be built in the inner suburbs.

He made the comments to a Property Council of Australia function on 22 October 2015, stating that Council was in the process of developing a policy to address the issue.

[Full Article](#)

## Email Subject Lines that Work Best...

### RESEARCH: Email Subject Lines that Work Best, those to Avoid, and the Best Time to Send

Leading email campaign provider Adestra [www.adestra.com](http://www.adestra.com) has released a report revealing which keywords in email subject lines cause higher open rates and which ones cause more unsubscribes than average.

It also reveals the best time and day to send emails--Tuesday at 4 p.m.

For law firms, based on results from the B2B campaigns Adestra studied, the words to use in subject lines for your newsletters and legal alerts are: bulletin, exclusive, latest, news, newsletter, research, and special. All perform solidly above average.

The top subject line word to avoid caught us by surprise: whitepaper. It posted a 200 percent lower open rate than average. Also avoid using the words alert, webinar, download, free and forecast.

Adestra's report, a follow-up to its groundbreaking 2013 study of email subject lines looked at anonymized data from 3 billion emails from 125,000 email campaigns generating 400,000 opens and 55,000 clicks.

"If a key strategy for your business is to maintain long-lasting connections with prospects to ensure you are in the right place at the right time it is very important to avoid unsubscribes," Adestra said, adding that "when unsubscribes happen in the B2B world it's much more important, especially for high-value products with a convoluted sales process."

*Alyn-Weiss' - Monthly Marketing Brief®*

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The [Fall 2015 Primerus Membership Directory](#) is a useful tool that makes it easy for you to find one of Primerus' high quality law firms around the world.

## Paradigm Magazine



The [2015 Fall Paradigm Magazine](#) 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](mailto:dhoeft@primerus.com)

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[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](#)

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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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