



Corporate Client e-Newsletter

February 2016

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

Business

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Buyer Beware - New FIRB Changes from December 1st!

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

Mullins Lawyers

Brisbane, Australia

From 1 December 2015, the Foreign Investment Review Board (FIRB) has implemented new rules aimed at strengthening the regulation of foreign investment in Australia. This article provides a summary of some important highlights.

[Full Article](#)

AUSTRALIA

Unfair Contract Relief Extended

By: **Selwyn Black, Esq.**

Carroll & O'Dea

Sydney, Australia

From 12 November 2016, a new law will protect small businesses from unfair terms in standard form of contracts.

The law will apply to a standard form contract entered into or renewed on or after 12 November 2016, where:

1. It is the supply of goods or services or the grant of an interest in land.
2. At least one of the parties is a small business (employs less than 20 people including casual employees employed on a regular and systemic basis).
3. The upfront price payable under the contract is no more than \$300,000, or \$1m if the contract is for more than 12 months.

Full Article

INDIA

No More 'Tax Terrorism' In India - Beginning Of A Tax Friendly Era

By: **Seth Dua & Associates**

New Delhi, India

After the advent of new Central Government in India in 2013, the outlook of global businessmen towards India has taken a big turnaround. The Prime Minister of India has taken a number of much-needed steps to put the economy back on track and woo foreign investors. India is now no longer looked upon as a cheap material and labour market but multinational companies look at India as a place to do their core business activities and gain profits out of the huge consumer demands of the country.

Full Article

UNITED STATES

Law Firm Assessed \$3.1 Million Fine - The Hanna Consent Order

By: **Jerry T. Myers, Esq.**

Smith Debnam Narron Drake Saintsing & Myers, LLP

Raleigh, North Carolina

This article is an update to the article titled: Best Practices for Collection Law Firms in the Face of Increasing Regulatory Scrutiny, published October 8, 2015.

Law firms that collect consumer debt continue to face increasing challenges. The newest and perhaps most daunting challenge is coming from the Consumer Financial Protection Bureau. Established by the Dodd-Frank Act, the CFPB seeks to protect consumers from unfair practices undertaken by financial institutions. While its initial focus was on policing the activities of large banks, the CFPB has broadened its scope to encompass the activities of virtually all financial institutions and their vendors, including attorneys.

Full Article

Finance and Banking

UNITED STATES

CFPB Clarifies Liability Standard for TRID

By: **Caren D. Enloe, Esq.**

Smith Debnam Narron Drake Saintsing & Myers, LLP

Raleigh, North Carolina

Since TRID was introduced, a debate has raged on as to whether the Truth in Lending Act's (TILA) liability rules or RESPA's would govern TRID violations. The debate has key ramifications: under TILA, there is a private right of action. Under RESPA, there is not. In a letter to the Mortgage Bankers Association, the CFPB has provided some answers to the debate while attempting to provide some assurances to the mortgage industry. The results are a mixed bag.

Full Article

Financial Reorganization/Bankruptcy

AUSTRALIA

Hands off! Protected Money under the Bankruptcy Act

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

Mullins Lawyers

Brisbane, Australia

In the recent case of *Shephard v Robson* [2015] FCA 1194, the Federal Court looked at the question of whether damages or compensation for personal injury was exempt money and whether that money, which was used to acquire property, was therefore protected money.

[Full Article](#)

PUERTO RICO

Protecting you and your Business in Puerto Rico When Sales Taxes are Owed

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

Estrella, LLC

San Juan, Puerto Rico

In the midst of Puerto Rico's historic economic crisis, the Island's Treasury Department, known as Hacienda, has recently employed new measures to collect overdue taxes, in particular the sales and use tax (IVU, for its Spanish acronym) applicable to retail businesses. Such measures include "preventative liens", coupled with the shut-down of business operations, which are designed to collect full payment of any debt owed within 30 days. Several local businesses have been shut down in recent weeks for overdue sales and use taxes.

[Full Article](#)

Labor and Employment

NETHERLANDS

The New Employment Law in Actual Practice: How Does the Court Decide?

By: [Jan Dop, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

In 2015, the Work and Security Act became effective which brought about drastic changes to the employment law in the Netherlands. How does the new employment law work in actual practice? In this newsletter, Russell Advocaten will inform you on how the courts decide on different aspects of the new employment law.

[Full Article](#)

UNITED STATES

Employment Agencies and the Affordable Care Act

By: [Michael G. Polis, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

Section 4980H of the Internal Revenue Code (and accompanying regulations promulgated by the Internal Revenue Service) addresses the employer excise tax as it relates to the ACA. The IRS has stated that "employers may not avoid meeting the threshold through the use of staffing agencies." For purposes of counting an "employee" under the excise tax calculation, the IRS has stated that an "employee" means a worker who is an employee of the employer under the common law test, which is often the case when an employer contracts with a staffing agency to provide temporary staff.

[Full Article](#)

UNITED STATES

Class Action Waivers Might Not be Enforceable When the Federal Arbitration Act Does Not Apply

By: [Samson R. Elsbernd, Esq.](#)

Wilke, Fleury, Hoffelt, Gould & Birney, LLP

Sacramento, California

Last year we reported on the California Supreme Court's decision that class action waivers in

employment contracts are enforceable in California notwithstanding unconscionability or State public policy to the contrary when the Federal Arbitration Act ("FAA") applies. [1] This past month, one of the California courts of appeal revisited the issue in a circumstance in which the FAA did not apply, and came to the contrary conclusion; determining that a court may refuse to enforce a class action waiver.

[Full Article](#)

UNITED STATES

Fair Labor Standards Act: Rounding Hours Worked

By: [Brian Culnan, Esq.](#)

Iseman, Cunningham, Riester & Hyde LLP

Albany/Poughkeepsie, New York

The federal Fair Labor Standards Act ("FLSA") requires covered employers to pay non-exempt employees overtime pay for all time worked over 40 hours in a given workweek. The failure to count all hours, or portions thereof, can result in an overtime pay violation, because employers have not fully accounted for hours worked in excess of 40 during the workweek.

[Full Article](#)

UNITED STATES

Psychological Fitness-For-Duty Examination Cannot Be Required Unless Employee's Mental State Directly Impacts Ability to Perform Essential Job Functions or Employee Poses a Direct Threat

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

Thomas Paschos & Associates, PC

Haddonfield, New Jersey

In *Williams*, __ N.J. Super. __ (January 25, 2016), Appellant, Paul Williams, was employed as a truck driver for the Department of Public Works (the DPW) of the Township of Lakewood (the Township). In March of 2013, an anonymous letter from a co-worker at the DPW said others "dreaded being assigned" with truck driver Paul Williams because of his daily "tirades and outbursts."

[Full Article](#)

Tax Law

UNITED STATES

New Estate Basis Reporting - Form 8971

[Greenberg Glusker](#)

Los Angeles, California

As a result of 2015 legislation, many estates have new reporting requirements that provide the IRS and estate beneficiaries with the estate tax value information about assets received - the purpose of these new requirements is to better ensure consistent basis reporting upon a sale or transfer of an asset received from a decedent. This new filing requirement only applies to estate tax returns filed after July 31, 2015.

[Full Article](#)

Telecommunications

INDIA

Telecom Regulator Prohibits Discriminatory Tariffs For Data Services

[Seth Dua & Associates](#)

New Delhi, India

The Telecom Regulatory Authority of India ("TRAI") has issued the 'Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016' on February 8, 2016 ("Regulations").

The Regulations have been issued in furtherance to a consultation paper issued by the TRAI in December 2015. In the said consultation paper, the TRAI had taken note of the practices of differential tariffs based on content, websites, applications or platforms and its likely impact on the key principles of tariff regulations, namely non-discrimination and transparency.

[Full Article](#)

UNITED STATES

Foti Revisited: When Does a Telephone Message Violate FDCPA

By: **Caren D. Enloe, Esq.**

Smith Debnam Narron Drake Saintsing & Myers, LLP

Raleigh, North Carolina

Ten years after the Southern District of New York entered into its infamous decision in *Foti v. NCO Financial Systems, Inc.*, 424 F. Supp. 2d 643 (S.D.N.Y. 2006), the debate of how to properly leave telephone messages rages on. In *Foti*, the debt collector left a message stating:

Good day, we are calling from NCO Financial Systems regarding a personal business matter that requires your immediate attention. Please call back 1-866-701-1275. Once again please call back, toll-free, 1-866-701-1275, this is not a solicitation. *Foti*, 424 F. Supp. 2d 643, 648 (S.D.N.Y. 2006).

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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**

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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](#)

[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 -](#)

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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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171 Monroe N.W., Suite 750
Grand Rapids, Michigan 49503
Toll Free: 800.968.2211 Local: 616.454.9939

www.primerus.com

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