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International Society of Primerus Law Firms XPress e-Newsletter
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Paradigm Magazine - Spring 2016 NEW!

The [2016 Spring Paradigm Magazine](#) provides in-house counsel and corporate executives with diverse geographical and legal substantive articles written by Primerus attorneys worldwide.

News & Notes:

Largest Chapter 11 in Brazilian History

Oi S.A., the 4th largest Brazilian telecom operator and its direct and indirect subsidiaries (Oi Móvel S.A., Telemar Norte Leste S.A., Copart 4 Participações S.A., Copart 5 Participações S.A., Portugal Telecom International Finance BV and Oi Brasil Holdings Coöperatief U.A.) filed a request for judicial reorganization before the Court of the State of Rio de Janeiro, Brazil. Judicial reorganization is the Brazilian equivalent to Chapter 11 of American Bankruptcy law. The debt amounts to over US\$19 billion.

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Business

HONG KONG

Establishing A Business in Hong Kong

By: [ONC Lawyers](#)

Hong Kong

For its free and open market economy, well-educated population, low tax regime, rule of law, geographical convenience to China and other parts of Asia, excellent modern infrastructure development and the benefits of various international treaties including the Mainland and Hong Kong Closer Economic Partnership Arrangement, Hong Kong is a popular and ideal place for foreign investment. According to an official survey, the total number of overseas and Mainland companies running business operations in Hong Kong was around 7,449 in 2013, with an increase of approximately 2.7% from the previous year.

[Full Article](#)

NETHERLANDS

Group Companies: The Risks Involved In Spreading Risk

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

Russell Advocaten B.V.

Amsterdam, Netherlands

Private limited companies (BVs) and Public limited companies (NVs) are well-suited to limit the risk of the entrepreneur. As the company bears its own rights and obligations, the management (and shareholders) are not directly liable for potential debts. Through group companies the risk can be limited even further. Several companies will be established, each performing its own activities. Often they are led by or "hooked to" a parent company. If, for instance, one company of the group will go bankrupt, the other companies of the group will not automatically go bankrupt as well.

[Full Article](#)

NETHERLANDS

Corporate law: What kind of exit will the "Brexit" lead to?

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

Russell Advocaten B.V.

Amsterdam, Netherlands

On 23 June 2016 a referendum was held in the UK regarding the question "*Should the United Kingdom remain a member of the European Union or leave the European Union?*" The majority of people voted to leave the EU and thus the Brexit became reality. What will be the consequences for entrepreneurs and employees in the Netherlands?

The Union Treaty provides that, from the time the European Council will be notified of the exit (which should take place after the summer) the European Union (EU) and the United Kingdom have two years to sort out the future relation between both parties (withdrawal agreement). Negotiations regarding the withdrawal agreement cannot start before the European Union has received the British notification. The British Prime Minister Cameron indicated that he would like to leave this duty to his successor who might not be in post before October. During the negotiations, the UK will remain a member of the EU. After 2 years, the United Kingdom will

receive non-Member status. The European principles of freedom (free movement of persons, goods, services and capital) will then lapse. In addition, after the exit, the European legislation (including Regulations and Directives) will, in principle, no longer apply to the United Kingdom.

[Full Article](#)

UNITED STATES

The Court, Not the Arbitrator, Should Determine the Arbitrability of Claims

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

Thomas Paschos & Associates, P.C.

Haddonfield, New Jersey

In *Morgan v. Sanford Brown Institute*, 2016 NJ Lexis 563 (June 14, 2016), plaintiffs filed a lawsuit asserting that misrepresentations and deceptive business practices by defendant Sanford Brown Institute and certain administrators caused them to enroll in Sanford Brown's ultrasound technician program. Plaintiffs claimed that they sustained financial loss and other injury as a result of defendants' wrongful conduct.

[Full Article](#)

Consumer Protection

UNITED STATES

Fourth Circuit Ruling Will Likely Impact North Carolina's "Bathroom Law"

By: [Connie Elder Carrigan, Esq.](#)

Smith Debnam Narron Drake Saintsing & Myers, LLP

Raleigh, North Carolina

Few are now unfamiliar with the North Carolina General Assembly's March 23, 2016, enactment of the Public Facilities Privacy and Security Act, more commonly known as "HB2" or "the bathroom law." The law nullifies all city and county ordinances concerning wages, employment and public accommodations, as well as amends the North Carolina Equal Employment Practices Act (NCEEPA) by eliminating the pursuit of state court actions for wrongful discharge based on a violation of public policy stated in NCEEPA (a right that had been recognized by North Carolina courts since 1977). HB2 has attracted national attention and controversy for its provision amending all existing North Carolina statutes, ordinances, and regulations concerning public restrooms and changing facilities to restrict such usage to individuals based on the sex listed on that individual's birth certificate.

[Full Article](#)

Cybersecurity

AUSTRALIA

The Internet of Things and Australian Privacy Law

By: [Murray Thornhill, Esq.](#) & [Brent Renner-Hahn, Esq.](#)

HHG Legal Group

Perth, Australia

We are beginning to see the next big thing in Internet-related innovation. From Fitbit to Google Glass, the so-called 'Internet of Things', or the 'IoT', is poised to revolutionise the way we interact with the world. Inevitably, though, this innovative leap in consumer technology will present significant headaches for Australia's legislature and judiciary - in particular its potential to rapidly disrupt long-standing social and legal norms with respect to privacy. While this paper highlights the shortfalls of Australia's privacy law regime in light of the IoT, lawmakers should not impulsively and unnecessarily restrict these technologies. Rather, they must find the 'Goldilocks Zone', so to speak, between incentivising innovation and protecting privacy rights. That is, where any preemptive regulation is not too hard, not too soft, but just right.

[Full Article](#)

UNITED STATES

Cybersecurity - The Board's Role

By: [Andrew J. Weissenberg, Esq.](#)

Iseman, Cunningham, Riester & Hyde LLP

Albany, New York

As data breaches become more common, companies and organizations are adopting the mindset

that it is no longer "if," but "when" a security breach will occur. These incidents are both expensive and detrimental to a company or organization. A 2015 IBM study put the average consolidated total cost of a data breach at \$3.8 million, a 23 percent increase over the previous two years.

As your board secures and guides the future of your company or organization, board leaders need to take an active role in cybersecurity. It is the board's fiduciary duty to make sure your cyber assets are managed and protected.

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Finance and Banking

AUSTRALIA

10% Tax Withholding on Property Sale

By: [Gordon Perkins, Esq.](#)

Mullins Lawyers

Brisbane, Australia

A proposal by the Gillard Government to apply a 10% withholding for Capital Gains Tax on property sales has been enacted by the current Government. The withholding applies to disposals by foreign investors and to residents who sell real property valued at \$2 million or more without a clearance certificate. The new rules start on 1 July 2016.

[Full Article](#)

BRAZIL

Brazil's New Rules for the Management of Securities Portfolios

By: [Jose Luis Leite Doles, Esq.](#)

Barcellos Tucunduva Advogados

Sao Paulo, Brazil

The asset management industry in Brazil has been steadily growing for the last 20 years. From 1993 to 2013, Brazil's fund industry increased from 632 to 14,097 funds and the Assets under Management ("AuM") from R\$ 171 billion to R\$ 2,478 trillion; in other words, numbers show a growth spur of, respectively, 2,131% and 1,348% (in constant currency) in such period. In 2016, the fund industry reached more than R\$ 3,148 trillion in AuM.

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Insurance

AUSTRALIA

Manual Handling Training - Time for Employers to get the House in Order

By: [Cameron Seymour, Esq.](#) & [Duncan Hutchings, Esq.](#)

Mullins Lawyers

Brisbane, Australia

When it comes to defending common law claims for damages by workers, employers have better prospects when they can prove their workers were trained. Timely and adequate training is now especially important with the recent passage of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2015 (on 17 September 2015).

[Full Article](#)

UNITED STATES

Bad Faith Claim Based on Legal Conclusions Dismissed by District Court

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

Thomas Paschos & Associates, P.C.

Haddonfield, New Jersey

In *Canizares v. Hartford Ins. Co.*, 2016 U.S. Dist. LEXIS (E.D.Pa. May 27, 2016), plaintiffs were insured by Hartford under a comprehensive homeowners policy. The policy covered damages to the premises as well as damages to personal property. The plaintiffs paid all premiums when due and had satisfied all conditions of their policy. In February 2015, the plaintiffs discovered that frozen pipes within their home had burst and caused extensive water damage to their home as well as to their personal property. These damages were fully covered under the plaintiffs' insurance policy. Following discovery of the damages, the plaintiffs appropriately notified Hartford of their claim and requested compensation for their losses. Hartford agreed to pay part of the claimed losses but declined to provide all of the demanded compensation.

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Labor and Employment

GERMANY

Minimum Wage in Germany: Spreading Bonus Payments over the Year

By: [Dr. Eric Uftring](#)

WINHELLER Attorneys at Law & Tax Advisors

Frankfurt, Germany

A recent court judgment concerning the legal obligation in Germany to pay a minimum wage of € 8,50 per hour can help employers deciding when to disburse bonus payments such as Christmas and holiday bonuses. Therefore, the employer has to figure out for what purpose he pays the bonuses.

[Full Article](#)

UNITED STATES

What Employers Should Know About the New Overtime Regulations

By: [Todd Masuda, Esq.](#)

Schneider Smeltz Spieth Bell LLP

Cleveland, Ohio

The first thing employers should know is that the new regulations are not dramatic. They are more along the line of tweaks that re-establish the significance of certain salary requirements in the existing law. The changes do not change the way overtime rules work, and the default rule remains the same: All employees must receive overtime (time and a half for each hour worked over 40 hours per week) unless they qualify for an exemption from overtime. There are dozens of exemptions to this rule, most of them industry specific, but the regulatory change affects the main "white collar" exemptions, which are the executive, administrative, and professional exemptions, and also encompasses computer employees.

[Full Article](#)

UNITED STATES

Private Agreement that Frustrates the LAD's Public-Purpose Imperative by Shortening the Two-Year Limitations Period for Private LAD Claims Cannot be Enforced

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

Thomas Paschos & Associates, P.C.

Haddonfield, New Jersey

In *Rodriguez v. Raymours Furniture Co., Inc.*, 2016 N.J. LEXIS 566, ___ N.J. ___ (2016). plaintiff Sergio Rodriguez, applied for a job with defendant Raymours Furniture Company, Inc., t/a Raymour & Flanigan. The employment application that he signed read, in bolded capital letters, "I agree that any claim or lawsuit relating to my service with Raymour & Flanigan must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary."

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UNITED STATES

Litigating Causation in Workers' Compensation

By: Primerus Workers' Compensation Practice Group

Workers' Compensation is far from a monolithic area of settled law. State systems are widely divergent, and even within the state (northern versus southern California?) Any attempt to discern a meaningful conclusion about causation that rings true for all jurisdictions will fail just like Wylie Coyote's attempts to nab the Roadrunner. However, litigating causation of the extent of the injury limits the instances where a claimed incident is alleged to have caused every diagnoses modern medicine can discover leading to a "soft fraud" of the evolving claim.

[Full Article](#)

Personal Injury

AUSTRALIA

Is Compensation for Injuries Received in Motor Vehicle Collisions the same for each State in Australia?

By: David Jones, Esq.
Carroll & O'Dea

Sydney, Australia

Australia is a Commonwealth of six States and two Territories. Each State and Territory have differing compensation schemes. The procedure to claim compensation is different in each State and the entitlements which are available are different for each State and Territory.

[Full Article](#)

Real Estate & Leasing

NETHERLANDS

Real Estate: Shop Premises Collapsed - What to do?

By: Ynze Kliphuis, LL.M.
Russell Advocaten B.V.

Amsterdam, Netherlands

If the damage has to be repaired by the lessor or the lessee is governed by the regulation on defects, one of the core values of rent protection. A defect must be repaired by the lessor if:

- It cannot be attributed to the lessee
- It is a condition or quality of the leased property that does not provide the lessee with the quiet enjoyment he could have expected when entering the lease of well-maintained premises of the same kind.

Defects may be, for instance, a leaking roof, a defective boiler or long-term difficult access.

[Full Article](#)

UNITED STATES

Just Work With Me: When is it a Good Idea to keep Working with a Defaulting Tenant?

By: Henry N. Pharr III, Esq.
Horack, Talley, Pharr & Lowndes, P.A.

Charlotte, North Carolina

How many times (even during a robust market) have landlords considered and perhaps acted on a tenant's request to grant them abatement, deferrals and other concessions in order to preserve the relationship, avoid vacancy, make their lender happy and keep the rent coming in? More often than you might imagine. Although there are clearly self-interests on both sides in the decision to allow the tenant to pay partial rent or defer overdue amounts under the lease, often landlords and tenants enter into such discussions with the best intentions for all involved. Yet, even the most benevolent agreements can lead to negative consequences down the road.

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Paradigm Magazine



The **2016 Spring 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.

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[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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