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International Society of Primerus Law Firms XPress e-Newsletter
September 2016

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Paradigm Magazine - Spring 2016

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

Business

[BRAZIL](#)

Hague Apostille Convention - effective in Brazil as from August 14, 2016

By: [Flavia Cantinho Pinheiro, Esq.](#)

Barcellos Tucunduva Advogados

Sao Paulo, Brazil

Due to the accession of Brazil to the Hague Apostille Convention, as from August 14, 2016 the requirement of legalization by the Brazilian Consulate will be abolished for (i) effectiveness in foreign signatory countries of public documents issued in Brazil; and (ii) effectiveness in Brazil of foreign public documents issued in the signatory countries.

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UNITED STATES

Ukraine-/Russia-Related Sanctions Update and Overview: U.S. and EU Reaffirm Sanctions

By: [Jennifer M. Smith, Esq.](#)

The Law Offices of Stewart and Stewart

Washington, D.C.

In July 2016, President Obama and Secretary of State John Kerry reaffirmed that the U.S.'s Ukraine-/Russia-related economic sanctions will remain in effect unless Russia fulfills its obligations under an agreement reached in February 2015 in Minsk. Also in July 2016, the European Union ("EU") extended its economic sanctions on Russia by six months until the end of January 2017.

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Family and Matrimonial

UNITED STATES

From the Mouth of Babies... "Mom, are you ready to be his friend?"

By: [Rose H. Stout, Esq.](#)

Smith Debnam Narron Drake Saintsing & Myers, LLP

Raleigh, North Carolina

April 25 is "Parental Alienation Awareness Day." Perhaps, you haven't heard of Parental Alienation. Unfortunately, many children and parents going through a divorce know it all too well.

Rosalind Sedacca, an international parenting expert of Child-Centered Divorce, says: "Parental Alienation is the darkest, most damaging consequence of divorce done wrong. Its impact can last a lifetime - and the effects can boomerang in the years to come."

In Psychology Today, Edward Kruk finds that 11-15% of the children of divorcing parents suffer the effects of implacable hostility - which is where one parent refuses the other parent access to the children. In the UK, where roughly 250,000 divorces occur every year, that estimate would equate to some 50,000-75,000 children every year being impacted by implacable hostility.

[Full Article](#)

Finance and Banking

AUSTRALIA

Recent Property Law Changes in Queensland

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

Mullins Lawyers

Brisbane, Australia

The Queensland Government recently passed changes to the law to make transfers of residences to foreigners liable for an additional 3% stamp duty on the foreigner's interest in the residence. Contracts entered into on or after Saturday 1 October 2016 are affected.

The additional stamp duty is called Additional Foreign Acquirer Duty (AFAD). AFAD also applies to Landholder Duty and Corporate Trustee Duty and it is designed to apply no matter how the interest in land is held. For example if the foreign person is a partner in a partnership and another partner acquires the land for the partnership, the transaction is caught.

[Full Article](#)

GERMANY

Payment Accounts Directive - banks will soon have to set up an account for anyone

By: [Lutz Auffenberg, Esq.](#)

WINHELLER Attorneys at Law & Tax Advisors

Frankfurt, Germany

As of this summer, the new Payment Accounts Directive will be transposed into the national law of each member state of the European Union. For this reason, the German Bundestag adopted the new German Act on Payment Accounts on April 11, 2016.

Consumers entitled to have a basic payment account

The regulations relating to basic payment accounts caused the most significant media response. Payment institutions will be obligated to provide each consumer with a current account including standard functions without discriminating anyone meaning that anyone legally residing in the European Union will be entitled to open a basic bank account. This includes asylum-seekers as well as persons who cannot be deported. The price of this account must be 'reasonable'.

[Full Article](#)

Financial Reorganization/Bankruptcy

PUERTO RICO

Chapter 11 - Bankruptcy Basics For Debtors

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

Estrella, LLC

San Juan, Puerto Rico

A case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a "reorganization" bankruptcy.

An individual cannot file under chapter 11 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. In addition, no individual may be a debtor under chapter 11 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

[Full Article](#)

Insurance

AUSTRALIA

The Danger of Workers who do not "get over it" and Managers who do not "get it"

By: [Jason Lewis, Esq.](#) & [Daniel Sullivan, Esq.](#)

Mullins Lawyers

Brisbane, Australia

Ms Eaton worked in an administrative role at a TriCare nursing home from June 2007 until her resignation in March 2010. By the end of this period, Ms Eaton, then aged 55, had developed depression and anxiety. In July 2010 Ms Eaton attempted to return to work as an administrative assistant at a hospital but found after one day that she was unable to do so.

Ms Eaton launched legal proceedings against Tricare for personal injury. The trial judge found that Ms Eaton's psychiatric condition was caused in part by the conduct of a fellow employee, Ms Harrison, who was the manager of the nursing home from April 2009.

[Full Article](#)

UNITED STATES

No Estoppel Where Express Reservation of Rights Letters Were Provided to Policyholders

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

Thomas Paschos & Associates, PC

Haddonfield, New Jersey

In *Nationwide Prop. & Cas. Ins. Co. v. Shearer*, 2016 U.S. App. LEXIS 9635 (3d Cir. (Pa.) 2016), Randy and Erin Shearer sued a group of homeowners, claiming that the owners permitted sewage to leak onto the Shearer's property. Nationwide agreed to provide a defense under a reservation of rights. Specifically, Nationwide advised by two separate letters that upon the conclusion of its coverage investigation, it might deny coverage based on its policy's exclusions for pollution or biological deterioration. Nationwide's letters expressly stated that its decision to provide a defense should not be deemed a waiver or estoppel of its rights under its policy.

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Labor and Employment

UNITED STATES

New Overtime Regulations - Is Your Company Ready?

By: [Adam J. Shafran, Esq.](#)

Rudolph Friedmann LLP

Boston, Massachusetts

Beginning on December 1, 2016, nearly five million employees will now be eligible for overtime compensation under new regulations issued by the United States Department of Labor, marking the first change in these laws since the 1970's. Currently, executive, administrative and professional employees earning a salary of more than \$23,660 per year are not eligible to receive overtime compensation when they work more than 40 hours a week. On May 18, President Obama announced the publication of the Department of Labor's final rule updating the overtime regulations, which will automatically provide expansive overtime coverage to these categories of employees.

The new regulations raise the minimum salary threshold to \$47,476 per year and automatically increase every three years to keep up with inflation. This means that executive, administrative and professional employees earning less than \$47,476 per year will now be eligible for overtime compensation for any workweek in which they work more than 40 hours. In Massachusetts, it is estimated that this new salary threshold will triple the number of employees eligible for overtime, from 101,000 to 382,000.

[Full Article](#)

UNITED STATES

An Analysis of Tennessee Workers' Compensation Board's Recent Split Decision Regarding Motions to Dismiss in *Syph v. Choice Food Group, Inc.*

By: [Jared S. Renfroe, Esq.](#)

Spicer Rudstrom PLLC

Memphis, Tennessee

In a case that was decided this past April, Deborah Syph ("Employee") alleged that she injured her back while lifting boxes while working for Choice Food Group, Inc. ("Employer"). Employer questioned whether the alleged injury was compensable under the amended workers' compensation law. Employee was given a panel of physicians and selected Dr. Melvin Law. Dr. Law evaluated Employee and authored a report stating that he was "unable to establish any causation or an apportionment based on a significant change in her subjective pain or dysfunction" and was "unable to establish an anatomic change."

[Full Article](#)

Oil & Gas

UNITED STATES

Can a landowner obtain a new oil and gas lease by severing production rights from storage rights?

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

Rothman Gordon

Pittsburgh, Pennsylvania

In Pennsylvania, it is not unusual to find an oil and gas lease that provides for both production and storage of gas. These leases are known as dual purpose leases. Many of these leases do not pay bonuses to the landowner and do not pay royalties in excess of the state minimum of 12 ½%. In fact, many of these dual purpose leases pay only small amounts for production and storage, usually a few hundred dollars per production well and a few hundred dollars per storage well.

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Professional Liability

UNITED STATES

Plaintiff Who Had Unknowingly Retained an Unqualified Expert to Prepare an Affidavit of Merit Should Be Granted Time to Retain a New Expert

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

Thomas Paschos & Associates, PC

Haddonfield, New Jersey

In *Castello v. Wohler*, 2016 WL 3369247 (N.J. App. June 20, 2016), Castello first visited Wohler because she was having difficulty breathing. Wohler discovered that Castello's stomach was in her chest as opposed to its usual place below the diaphragm and immediately performed a hernia operation in June 2010. When Castello experienced post-operative discomfort, Wohler performed an exploratory surgery to repair a tear to the gastroesophageal junction and discharged her to a rehabilitation facility. More complications led to Castello's transfer to a Pittsburgh hospital, where an esophageal surgeon diagnosed an esophageal leak and performed various medical procedures, including an esophagectomy, thoracotomy and laparotomy.

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Real Estate & Leasing

HONG KONG

Raising Requisitions in the Context of Discrepancies Found in Provisional and Formal Agreement

By: [ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

In several of our past newsletters, we have discussed issues relating to the sale and purchase of properties involving unauthorised building works. In general, the existence of unauthorised building works in a property affects its vendor's ability to fulfil its obligation of showing good title to such property. As such, in relation to such transactions, it is not uncommon to see clauses in the sale and purchase agreement which preclude the purchaser from raising requisitions regarding specific unauthorised building works found in the property.

[Full Article](#)

UNITED STATES

Another Reason a Residential Landlord May Not Want to Ask for a Security Deposit

By: [James S. Singer, Esq.](#)

Rudolph Friedmann LLP

Boston, Massachusetts

Some seasoned landlord/tenant practitioners and even judges advise residential landlords to forego requesting security deposits from their tenants. Massachusetts law allows a landlord to require a tenant to pay at or prior to the commencement of a tenancy the first month's rent, last month's rent, a security deposit (equal to the first month's rent), and the purchase and installation cost for a key and lock. So why would a landlord not demand a security deposit as protection for

a tenant's non-payment of rent or damages to the rental unit? The answer is that the Massachusetts statute dealing with security deposits (G.L. c. 186, § 15B) is so technical and its penalties so severe, that it may not be worth the risk that a landlord may not follow the letter of the law and can be held liable for three times the amount of the security deposit, plus the tenant's attorney's fees and costs!

[Full Article](#)

Wills & Estates

AUSTRALIA

Enduring Attorneys: a Warning about Conflict Transactions

By: [Michael Klatt, Esq.](#) & [Krystal Bellamy, Esq.](#)

Mullins Lawyers

Brisbane, Australia

An enduring attorney is a person appointed by another (the principal), by a document called an enduring power of attorney (EPA), to make decisions on the principal's behalf about financial and/or personal/health matters. Unless the principal revokes the EPA or the attorney resigns while the principal still has capacity, the attorney's decision-making power will continue (or "endure") even after the principal loses capacity to make their own decisions.

Administrators are similar to attorneys except that administrators are appointed by the Queensland Civil and Administrative Tribunal (the Tribunal) to make financial decisions for persons with impaired capacity.

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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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[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.

International Society of Primerus Law Firms
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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