



## Corporate Client e-Newsletter

*February 2014*

I am pleased to provide the February 2014 edition of *Primerus Xpress*, our monthly e-Newsletter for corporate clients.

I hope you will take a moment to look through this month's collection of articles, all of which are authored by Primerus lawyers to provide corporate clients and in-house counsel relevant and up-to-date news regarding current developments, best practices, and legal trends from around the world.

You can find out more about any of the authors in our e-Newsletter by simply clicking on their name. I also invite you to explore the resources available at [primerus.com](http://primerus.com), including a directory of Primerus firms complete with practice area and bio information, as well as the current electronic version of our *Paradigm* magazine.

The International Society of Primerus Law Firms brings together the world's finest law firms that share a commitment to providing quality service for reasonable fees. With local counsel and independent law firms in 130 cities and over 40 countries around the world, you can rely on Primerus to help you find the right lawyer for whatever legal matter you face. For more information about Primerus, or to find a Primerus lawyer in a particular jurisdiction, please don't hesitate to contact me at [nkacher@primerus.com](mailto:nkacher@primerus.com), or call me toll free at 800.968.2211.

Sincerely,  
Nick Kacher  
Sr. Vice President and General Counsel  
International Society of Primerus Law Firms

### In this Issue...

#### Articles:

- [Business](#)
- [Environmental](#)
- [International Business](#)
- [Labor & Employment](#)
- [Products Liability Defense](#)

#### Paradigm Magazine

#### Resources

## Business

### USA

#### **Raising Money from Accredited Investors through General Solicitations and Advertisements: The Amendments to Rule 506**

**By: [Mark W. Klein, Esq.](#)**

***Brody Wilkinson PC***

***Southport, CT***

On September 23, 2013, the amendments to Rule 506 of Regulation D under the Jumpstart Our Business Startups Act (known as the "JOBS Act") became effective following the adoption of implementing rules by the Securities and Exchange Commission ("SEC"). These amendments lift the longstanding ban on general solicitations and advertisements to accredited investors. As a result, companies can now pitch their private investment opportunities to accredited investors through newspaper, television and website advertisements, and other previously prohibited means, if they comply with certain requirements. This will significantly increase the number of potential investors for small businesses and start-up companies.

[Full Article](#)

### USA

#### **Alert-Qualified Small Business Stock (QSBS) Retroactive Tax**

**By: [Ryan W. Lockhart, Esq.](#)**

***Buchman Provine Brothers Smith LLP***

***San Francisco, CA***

In 1993, California adopted a statute which provided for the exclusion or deferral of gain from the sale or exchange of qualified small business stock ("QSBS"). In order to qualify as QSBS, the stock must be in a domestic C corporation which has aggregate gross assets of less than \$50,000,000. In addition, at least 80% of the C corporation's business must be an "active business," rather than investment activity or certain service provider businesses. The California statute generally mirrored the federal tax statute, but added a requirement that at least 80% of the company's payroll at the time that the stock was purchased be within California and at least 80% of the assets of the company be located within California during the holding period for the stock in order to qualify for the QSBS exclusion or deferral.

[Full Article](#)

## Environmental

### USA

#### **Avoiding Superfund Liability: EPA Adopts New Standard for Phase I Environmental Site Assessments**

**By: [Sedina L. Banks, Esq.](#) and [Brian E. Moskal, Esq.](#)**

***Greenberg Glusker***

***Los Angeles, CA***

On November 6, 2013, ASTM (formerly known as the American Society for Testing and Materials) revised its standard for conducting Phase I environmental site assessments, known as Standard E1527-13 ("Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process"). ASTM E1527-13 is the first revision to the ASTM Phase I standard since its 2005 revision of the standard (known as ASTM E1527-05).

[Full Article](#)

## International Business

### THE NETHERLANDS

#### **New Laws, New Opportunities in 2014**

**By: [Russell Advocaten B.V.](#)**

***Amsterdam, The Netherlands***

As of 1 January 2014, public limited companies and financial institutions are enabled to revise or to claim back excessive or incorrectly paid executive bonuses ("clawback"). In addition, the legislation includes rules for the settlement of stock exchange profit by members of the management board and the obligation to account for the bonus policy through the annual report towards the shareholders. Generally, this will be the task of the Supervisory Board.

[Full Article](#)

## **MEXICO**

### **Energy Reform-Mexican Constitution**

**By: [Sergio Mario Ostos, Esq.](#) and [Antonio Franck, Esq.](#)**

**Cacheaux Cavazos & Newton**

**Mexico City, Mexico**

On December 21, 2013, the decree that reformed Articles 25, 27 and 28 of the Mexican Constitution relating to the energy, electric and hydrocarbon sectors came into effect. This decree is best known as the "Energy Reform."

[Full Article](#)

## **MEXICO**

### **The Importance of Designating Successor Trust Beneficiaries in Real Estate Management Trusts**

**By: [Marimar Perez-Cacheaux, Esq.](#) and [Ramon Concha, Esq.](#)**

**Cacheaux Cavazos & Newton**

**Mexico City, Mexico**

There exist many trusts in Mexico that were created in order for foreigners to acquire and own real estate in the restricted zone (a strip of 50 kilometers - approximately 31 miles - along the coast, or 100 kilometers - approximately 62 miles - from the border). In any of these situations, a foreigner contracts a Mexican bank (the "Trustee"), so that real estate is transferred to the trust and the foreigner, in his/her capacity as trust beneficiary, has the right to use and enjoy the real property. If the trust was duly structured and formalized, the foreigner, as trust beneficiary, shall designate successor trust beneficiaries, meaning that he/she will name the person or persons who will replace him or her in the event of death.

[Full Article](#)

## **USA**

### **U.S. Economic Sanctions Laws: 5 Things Every Company Engaged in International Transactions Should Know and Best Practices for Compliance**

**By: [Alan M. Dunn, Esq.](#), [Jennifer M. Smith, Esq.](#) and [Jumana M. Misleh, Esq.](#)**

**The Law Offices of Stewart and Stewart**

**Washington, DC**

This is the second in a series of articles by Stewart and Stewart on Best Practices in International Transactions and Trade. Last month's article covered U.S. Export Control laws. In this month's article, we address issues every company engaged in international transactions and trade needs to know about U.S. economic sanctions laws and best practices for compliance with these laws. Please watch for future articles covering best practices for compliance with the Foreign Corrupt Practices Act (FCPA), Antiboycott Regulations, and other customs and foreign trade laws.

[Full Article](#)

## **USA**

### **Trade Adjustment Assistance: Rapidly Increasing Use by Workers Whose Employers Are Moving Production Offshore in the Past Decade**

**By: [Terence P. Stewart, Esq.](#)**

**The Law Offices of Stewart and Stewart**

**Washington, DC**

The Trade Adjustment Assistance ("TAA") program has been part of the political compromise behind trade liberalization since the Trade Expansion Act of 1962. TAA is based on the concept that, while trade liberalization should be an economic benefit for the nation as a whole, there are workers, industries, and communities who will be adversely affected by trade liberalization and who would benefit from training and other benefits to help them adjust to the changing business environment in the United States.

[Full Article](#)

## Labor & Employment

### USA

#### **Alert-Cal. Supreme Court Re-Visits Mandatory Arbitration Clauses in Employment Contracts: *Sonic-Calabasas A, Inc., v. Moreno***

**By: [Horace W. Green, Esq.](#)**

***Buchman Provine Brothers Smith LLP***

***San Francisco, CA***

In 2011, the California Supreme Court held that an employment contract requiring an employee to arbitrate all claims, which effectively acted to waive the employee's right to bring a claim to the Labor Commissioner alleging the employer's failure to pay wages (known as a "Berman" hearing), violated public policy and was therefore unlawful. *Sonic-Calabasas A, Inc. v. Moreno* (2011) 51 Cal.4th 659 (*Sonic I*). The Court also held that this rule was not preempted by the Federal Arbitration Act ("FAA") because it did not discriminate against arbitration agreements. However, in October 2011 the United States Supreme Court vacated the judgment and remanded the case for further consideration in light of *AT&T Mobility LLC v. Concepcion*, 563 U.S. \_\_\_, 131 S.Ct. 1740 (2011) (*Concepcion*). *Concepcion* held that, in light of both federal law providing that arbitration agreements are enforceable in the same manner as other contracts, and liberal federal policy favoring arbitration, the FAA preempts any state law which prohibits outright arbitration of a particular type of claim.

[Full Article](#)

### MEXICO

#### **Minimum Wage Increased by 3.9% in Mexico**

**By: [Pablo Saenz, Esq.](#)**

***Cacheaux Cavazos & Newton***

***Mexico City, Mexico***

On December 18, 2013 the National Commission on Minimum Wages (the "Commission") approved a 3.9% increase in the minimum wage, the same which became effective on January 1, 2014. Such increase is relevant in that employees in Mexico have a right to receive wages that are not less than the general or professional minimum wages.

[Full Article](#)

## Products Liability Defense

### USA

#### **Sophisticated Users Failure to Warn**

**By: [Tonya D. Hubinger, Esq.](#)**

***Buchman Provine Brothers Smith LLP***

***San Francisco, CA***

In a recent California appellate court decision, *Pfeifer v. John Crane, Inc.*, the Second Appellate District opined on the "sophisticated intermediary" defense. In a unanimous decision, the court held that when a manufacturer provides hazardous goods to a "sophisticated" intermediary that supplies the goods to its employees or servants, the supplier is subject to liability for failure to warn of the hazards, absent some basis for the manufacturer to believe that the ultimate users know or should know the hazards.

[Full Article](#)

## Paradigm Magazine

To View the Latest Issue of the Paradigm Magazine, [click here](#).



## About Primerus

The International Society of Primerus Law Firms (Primerus) is a society of top-rated, independent, boutique law firms that have earned the right to display the Primerus seal of quality. Primerus has over **190 member firms** in **130 cities** located in nearly **40 countries**. **High quality legal services at reasonable fees - that's how Primerus can work for you.** With nearly 3,000 lawyers in the society, Primerus members, collectively, offer the breadth of expertise and jurisdictional coverage that only the world's largest law firms can offer to their clients, but at more reasonable rates. For more information, please call 800-968-2211 or visit [primerus.com](http://primerus.com).

## Resources

[Find a Primerus Law Firm](#)

[Primerus Law Institutes and Practice Groups](#)

[Paradigm Magazine](#)

[Legal Articles](#)

[Compendiums](#)

[Webinar Library](#)

[About Primerus](#)

[Primerus Video Gallery](#)

[Contact Us](#)

**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](http://www.primerus.com)