



Corporate Client e-Newsletter

June 2015

Welcome to the June edition of the Primerus Xpress. This month's edition contains several articles focusing on emerging legal issues that may impact your business; including, recent court decisions related to personal email and social media accounts belonging to employees, attorney inclusions in Emergency Response Situations, and the cutting edge insurance issues related to the use of drones. This month's newsletter contains several enlightening articles covering an assortment of international legal issues, including, but not limited to, labor and employment concerns over employee strikes and the emerging trend of imposing additional responsibilities on employers to protect employees from their own negligence, challenges to financial recovery from contractors in liquidation, family law issues, and religious vilification laws abroad. Each article shares insights into the author's country's laws and judicial proceedings.

The articles in this e-newsletter were authored by Primerus members and provide you with relevant information regarding legal developments, best practices, and trends from around the world. If you are seeking a specific article, or information on a particular legal development, and don't find it in this e-newsletter, please feel free to contact me at LDingman-Nowicki@primerus.com.

Best Regards,
Lisa N. Dingman-Nowicki, Esq.
General Counsel
International Society of Primerus Law Firms

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Business

AUSTRALIA

Banking Code of Conduct Binding or Window Dressing?

By: Mark Madsen, Esq. & Ruth Sainsbury, Esq.

Mullins Lawyers

Brisbane, Australia

Trustees frequently have to consider a bankrupt's dealings with banks. Bankrupts often allege misconduct on the part of a bank. The Code of Banking Practice sets out best practice in relation to a bank's conduct towards its customers. Until recently, the Code had generally been considered to be a guide; a desirable code of practice which banks should follow. However, two recent cases confirm that the banking code may be contractually binding in particular cases.

[Full Article](#)

AUSTRALIA

Changing my Licensed Area - Whose Approval do I need?

By: Curt Schatz, Esq.

Mullins Lawyers

Brisbane, Australia

Licensees often seek to alter, rebuild, change or increase the area of their licensed premises. If a licensee is looking to extend or alter its licenced area, the licensee needs to be mindful of the number of approvals it must obtain to support its application.

[Full Article](#)

NETHERLANDS

Contracts: International litigation and arbitration will become more effective in the Netherlands

By: Reinier W.L. Russell, Esq.

Russell Advocaten B.V.

Amsterdam, Netherlands

Because of two changes in a EU regulation, as of 10 January 2015 it will become easier to make a contractual choice of forum in favour of a Dutch Court and to enforce a Dutch judgment in a EU member state. It will also become more attractive to deal with international (arbitration) cases in the Netherlands.

[Full Article](#)

Construction

AUSTRALIA

Slab Heave Causes Tribunal to Order Total Demolition and Reconstruction by Home

Builder By: HHG Legal Group

West Perth, Australia

Home builders around the country are at risk of having to pay hundreds of thousands for houses to get knocked down and rebuilt from scratch. That is the upshot of the recent Victorian Civil and Administrative Tribunal's decision in *Softley v Metricon*.

[Full Article](#)

AUSTRALIA

Victorian Supreme Court Declares Enforcement of Payment Awards by Insolvent

Contractors Unconstitutional: Façade Treatment Engineering LTD. V. Brookfield Multiplex Constructions PTY LTD

**By: [HHG Legal Group](#)
West Perth, Australia**

Never do subcontractors have more reason to be worried than when head contractors become insolvent and no longer have the financial means to pay their subcontractors for the work they have done. Indeed, the need ensure that cash flows to the subcontractors who need it the most is the very purpose of security of payment legislation.

[Full Article](#)

AUSTRALIA

Liquidators and BCIPA Adjudications: Is It Lawful?

By: [Mark Madsen, Esq.](#) & [Ryan Solomons, Esq.](#)

**Mullins Lawyers
Brisbane, Australia**

Can construction principals seek to stay the enforcement of an adverse adjudication determination made under security of payment legislation where they have a set-off claim against a contractor who is in liquidation?

[Full Article](#)

Constitutional

AUSTRALIA

Charlie Hebdo and Religious Vilification Laws

By: [HHG Legal Group](#)

West Perth, Australia

While the Western world has generally championed the virtue of freedom of speech in the aftermath of the Charlie Hebdo shootings, the protests erupting in other parts of the world since the release of the magazine's latest edition highlight the flip-side of the freedom of speech debate - the right to freedom from racial and religious vilification.

[Full Article](#)

Employment

HONG KONG

Is a Strike Unavoidable? The Legal Issues behind the Cathay Pacific Labour Dispute

By: [ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

Employment disputes may arise from time to time but swift action by the employer and sincere discussion will enable the parties to resolve the disputes amicably.

[Full Article](#)

HONG KONG

Statutory Duty to Protect Workers Who Have Not Taken Reasonable Care for Their Own Safety

By: [ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

On 19 March 2015, the Court of Final Appeal in HKSAR v Gammon Construction Limited (FACC 10/ 2014) unanimously held that carelessness of workers is not a defense against criminal liabilities arising from industrial accidents.

[Full Article](#)

UNITED STATES

Connecticut Enacts Law Restricting Employers' Access to Personal Social Media and Email Accounts

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

The Bennett Law Firm, P.A.

Portland, Maine

On May 21, 2015, Connecticut Governor Dannel Malloy signed into law a new statute that will restrict an employer's ability to access email, social media, and the personal online accounts of applicants or current

employees. The new law will take effect on October 1, 2015 and will apply to private employers of any size (and virtually all public sector employers).

[Full Article](#)

UNITED STATES

Government Agencies Issue Proposed Guidance and Regulations That Could Lead to "Blacklisting" of Certain Government Contractors

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

The Bennett Law Firm, P.A.

Portland, Maine

The U.S. Department of Labor (DOL) has issued proposed guidance and the Federal Acquisition Regulatory Council (FAR) has issued proposed regulations requiring government contractors and subcontractors to report regularly on workplace law violations found by administrative agencies, the courts, and arbitrators. President Obama's Fair Pay and Safe Workplaces Executive Order (E.O. 13673) will take an employer's record of violations into account when deciding whether to award future Federal contracts of over \$500,000, whether to cancel existing contracts, and potentially demand further action to address a pattern of violations. The DOL Guidance and the FAR Rule proposals both have 60-day public comment periods closing on July 27, 2015.

[Full Article](#)

UNITED STATES

Massachusetts' Mandatory Sick Pay Law Takes Effect July 1, 2015 - Full Compliance Deferred for Certain Employers until January 1, 2016

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

The Bennett Law Firm, P.A.

Portland, Maine

As noted in a previous E-Alert from our firm, on November 4, 2014, Massachusetts voters approved a mandatory sick pay law. Although this law takes effect July 1, 2015, the Attorney General has provided a safe harbor for certain employers until January 1, 2016. The safe harbor protects employers who have a paid time off/sick pay policy of at least thirty hours per year in place before May 1, 2015. In addition, on and after July 1, 2015, all employees not previously covered by such a policy, including part-time employees, new employees, and per diem employees, must also be entitled to time off under the policy at the same rate of accrual as full time employees. Notwithstanding the six month safe harbor provision, all employers are still subject to the anti-retaliation/job protection provisions as of July 1, 2015. As of January 1, 2016, all employers must comply with all aspects of the new paid sick leave law as summarized below.

[Full Article](#)

Family

AUSTRALIA

Breaching Parenting Orders - What are the Penalties?

By: [HHG Legal Group](#)

West Perth, Australia

There can often be a perception by parties to Family Law child related matters that the battle has been won once the Court makes Final Orders.

Unfortunately, given the inherent complexities and high emotions present in most child related matters, this is rarely the case and breaches of parenting Orders occur relatively frequently.

[Full Article](#)

AUSTRALIA

Lottery Wins After Separation - How are They Dealt With in Family Law Matters?

By: [HHG Legal Group](#)

West Perth, Australia

Given the extremely remote chance of having a large lottery win surely a party would never need to worry about what treatment the Family Court might give to these winnings in the event they have separated from their partner or spouse. Perhaps surprisingly, this is not the case.

[Full Article](#)

AUSTRALIA

0-4 Year Olds and Overnight Stays - What Does the Law Say?

By: [HHG Legal Group](#)

West Perth, Australia

There is a lot of debate around and research into when overnight stays for 0-4 years olds should commence, or at least when this should happen with regularity. The research tells us that the 0-4 period is a very significant development stage in a child's life, both neurologically and behaviourally. It is also the period when a child's attachments are established.

[Full Article](#)

AUSTRALIA

How Condoning Dangerous Activity can make you a Negligent Parent

By: [Cameron Seymour, Esq.](#) & [Catherine King, Esq.](#)

Mullins Lawyers

Brisbane, Australia

We all know the "oh-no" moment when what we hoped wouldn't happen, happens. The case of Verryt v Schoupp¹ is one we can all relate to and it confirms the test for contributory negligence.

Cast your mind back to when you were a 12 year old child. Did you perceive the world with delight and pure abandonment? Was riding your BMX full pelt down the steepest hill, throwing cricket balls near windows and practising wrestling moves on your little sister a normal day? Most children will do these things despite their parents' protesting "this will end in tears" but what if the parent condoned the activity?

[Full Article](#)

Insurance

UNITED STATES

The Limits to the Sky: Insurance Issues Related to Unmanned Aerial Systems

By: [Sharon D. Stuart, Esq.](#) & [Deborah Alley Smith, Esq.](#)

Christian & Small LLP

Birmingham, Alabama

This is the first post in our three-part blog series on unmanned aerial systems and their potential impact on the insurance industry - which is a condensed version of an article published in the Spring 2015 edition of the Defense Research Institute's (DRI) In-house Defense Quarterly.

Part II can be found [here](#), and the third and final post can be found [here](#).

Emerging autonomous and unmanned technologies will become part of our daily lives within a few years. Many scientists believe that artificial intelligence and robotics will allow machines such as self-driving cars, robotic devices, and unmanned aerial vehicles to more safely and efficiently perform functions currently performed by humans.

Of all the emerging autonomous vehicle technology, unmanned aerial systems (UAS) - most commonly known as drones - are currently the most prominent. Drones are everywhere, and experts anticipate exponential growth in the near future. In fact, the Federal Aviation Administration (FAA) expects there will be 30,000 drones in the sky within the next 10 years.

[Full Article](#)

Transportation

UNITED STATES

The Use of Attorneys in Emergency Response Situations

By: [Edgar M. Elliott IV, Esq.](#)

Christian & Small LLP

Birmingham, Alabama

In emergency situations, there are many things happening all at once - which means that there is a lot to keep up with and keep track of - and it's nearly impossible for one person to handle it all. Attorneys can be very helpful in such circumstances, and many are trained and experienced to handle emergency transportation matters.

If a lawyer is present, the client will have privileges, such as attorney-client privilege and work-product privilege, that are not present with other on-site officials. Although it is not necessary for a lawyer to be present in anticipation of litigation or attorney-work product, having one there makes it more apparent and

more easily defensible. If the truck driver involved in an accident is a client, all communications between him and the attorney are attorney/client communications that cannot be revealed. Thus, the lawyer should be the only one talking to the truck driver.

[Full Article](#)

Products Liability Compendium - April 2015

A Survey of The Law of Non-Contractual Indemnity and Contribution UPDATE - Product Liability Practice Group (PDI) - April 2015

[A Survey of The Law of Non-Contractual Indemnity and Contribution](#) has been prepared by the Products Liability Group of the Primerus International Society of Law Firms, Defense Institute and replaces the earlier April 2012 survey. Although our focus is the defense of products liability litigation, this survey of law applies generally to any company that finds itself the target of litigation in jurisdictions throughout the United States.

The purpose of this compendium is to provide a general reference source regarding the applicable law in each state on issues related to the allocation of fault as between defendants and non-parties in a products liability case in circumstances where there is no contract dealing with the issue. It is not intended to be a comprehensive discussion of the law in each jurisdiction, but simply to provide easy reference to the basic rules within each state. An awareness of the issues and applicable law may promote greater cooperation and cost saving arrangements that also increase the potential for a successful defense of all involved.

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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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