

**P** Primerus

# X P R E S S

International Society of Primerus Law Firms XPress e-Newsletter  
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The [2016 Spring Paradigm Magazine](#) provides in-house counsel and corporate executives with diverse geographical and legal substantive articles written by Primerus attorneys worldwide.

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# Business

## **AUSTRALIA**

### **What Should Directors do to Ensure Company Tax Compliance**

**By: [Selwyn Black, Esq.](#)**

**Carroll & O'Dea**

**Sydney, Australia**

*Roche v Deputy Commissioner of Taxation* [2015] WASCA 196 is a recent decision of a senior Australian court which demonstrates what a director may be required to do to discharge personal obligations for company taxes.

**[Full Article](#)**

## **AUSTRALIA**

### **Business: Update on Free Trade Agreements with China, Japan & Korea**

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

**Mullins Lawyers**

**Brisbane, Australia**

The free trade deals Australia signed with its Asian counterparts are now the talk of the town and we're excited about the potential benefits they will bring to our economy. Australians will (or at least they should) be paying less for electronic items, cars and clothes.

Let's take a look at the latest status of the free trade or partnership agreements with Australia's key Asian trading partners, China, Japan and Korea, to which over 50% of Australian goods are exported.

**[Full Article](#)**

## **NETHERLANDS**

### **Contracts: How to Restrict Internet Resale?**

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

**Russell Advocaten B.V.**

**Amsterdam, Netherlands**

*Internet sale offers a wide range of possibilities to reach consumers, but how can suppliers control the Internet resale of their products? What is permitted? And what isn't? What are the rights of your distributors?*

As a supplier you prefer to control the sales channels in order to protect the reputation of your products. The same applies to Internet resale by your distributors. However, online sales via a personal website or Internet platforms, such as eBay and Marktplaats.nl, cannot be restricted. Such a restriction of Internet sales may restrict competition too much resulting in the risk of severe fines for breaches of competition law. Potential fines may even amount to 10% of the annual turnover.

**[Full Article](#)**

## **NETHERLANDS**

### **Transfer of Undertaking: Obligation to Inform Employees**

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

**Russell Advocaten B.V.**

**Amsterdam, Netherlands**

Planning on a merger, acquisition or division of (part of) a business in the Netherlands or any other EU country? Then be aware of the EU law which sets out the strong position of employees in case of a transfer of undertaking (Directive 2001/23/EC). Russell Advocaten will inform you of the EU law on transfer of undertaking and the consequences thereof by a series of newsletters. This time: Obligation to inform employees.

**[Full Article](#)**

## **UNITED STATES**

### **CFPB Enters Consent Order with Buy Here Pay Here Auto Dealer**

**By: [Caren D. Enloe, Esq.](#)**

**Smith Debnam Narron Drake Saintsing & Myers, LLP**

**Raleigh, North Carolina**

In its first enforcement order of the year, the CFPB took aim at the financing practices of a buy here pay here auto dealer. "Buy here pay here dealers" sell the car and originate the auto loan without selling it to a third party.

The CFPB in its press release noted the dealer engaged in abusive financing schemes, hid auto finance charges and misled consumers. The consent order requires the dealer pay \$700,000.00 in restitution to consumers and levies a civil monetary penalty of \$100,000.00 on the dealer. The civil penalty has been suspended based upon the dealer's inability to pay. Additionally, the CFPB once again sets forth specific remediation requirements that those in the auto industry should review carefully and always consider.

[Full Article](#)

## Family and Matrimonial

### UNITED STATES

#### **Supreme Court Decision Illustrates That Issues Remain for LGBT Equality**

**By: [Parker Dozier, Esq.](#)**

***Smith Debnam Narron Drake Saintsing & Myers, LLP  
Raleigh, North Carolina***

Following the United States Supreme Court's decision to recognize the right of same-sex couples to marry, it was only a matter of time before the Court would need to address other issues that could arise between same-sex couples, such as child custody, separation, or divorce. In a recent case, the Supreme Court did just that.

[Full Article](#)

## Financial Reorganization/Bankruptcy

### PUERTO RICO

#### **Bankruptcy as a Negotiating Tool & Business Strategy in Puerto Rico**

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

***Estrella, LLC***

***San Juan, Puerto Rico***

Be it an asset sale, a device to negotiate with the taxing authorities or a precursor to a recapitalization, all business owners in Puerto Rico should be familiar with the options available under the Bankruptcy Code.

[Full Article](#)

### PUERTO RICO

#### **How Businesses in Puerto Rico Can Successfully Negotiate with Lenders to Modify a Loan**

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

***Estrella, LLC***

***San Juan, Puerto Rico***

In the midst of Puerto Rico's economic crisis, many businesses wait until they are in desperate straits (e.g., How are we going to make payroll tomorrow?) to let their lender bank know about problems. This is a fatal mistake. Approaching the bank early on not only builds trust and credibility, it gives the bank the flexibility to make concessions that might not be possible down the road. Poor communication is the enemy. It creates mistrust, raises suspicions and pushes the bank to assume the worst and take drastic actions that may be irreversible and ultimately not in the company's or the bank's best interest. Keep the bank in the loop.

[Full Article](#)

## Labor and Employment

### AUSTRALIA

#### **Sign of the Times - Commission Takes into Account State of the Economy in an Application to Terminate an Enterprise Agreement**

**By: [Alan Strain, Esq.](#)**

***Carroll & O'Dea***

***Sydney, Australia***

An example of common sense and pragmatism by the Fair Work Commission in the case of *Peabody Energy Australia PCI Mine Management Pty Ltd* (AG2015/5904) (Peabody). Peabody sought to terminate an Enterprise Agreement (Agreement) after its nominal expiry date in terms of section 225 of the Fair Work Act 2009 (Cth).

[Full Article](#)

## **GERMANY**

### **Employer Entitled to Check Browsing History**

**By: [Dr. Eric Uftring](#)**

**WINHELLER Attorneys at Law & Tax Advisors  
Frankfurt, Germany**

The Regional Labor Court of Berlin-Brandenburg ruled that an employer may be entitled to analyze the browsing history of a work computer even without the employee's consent to ascertain facts for a dismissal.

**[Full Article](#)**

## **UNITED STATES**

### **The Dangers of Looking the Other Way: Employer Held Liable to Pay Former Employee for Interrupting Lunch Breaks**

**By: [The Bennett Law Firm, P.A.](#)**

**Portland, Maine / New Hampshire**

Charter Communications (Charter) employed Karen Lopez-Easterling (Lopez) as a Front Counter Lead performing customer service duties. After being fired in 2014, Lopez sued to recover wages for work performed during her lunch breaks. Charter Communications denied knowing Lopez worked during lunch, but after a review of the case, the court found evidence to the contrary requiring that this matter proceed to trial.

**[Full Article](#)**

## **UNITED STATES**

### **More Disclosures Required for Employers and Labor Consultants**

**By: [David R. Wise, Esq.](#)**

**Iseman, Cunningham, Riester & Hyde LLP  
Albany/Poughkeepsie, New York**

As labor groups lauded the United States Department of Labor's final rule on persuader reporting which requires employers to report agreements with consultants working on union organizing activities, employers expressed concern that the rule interferes with internal business affairs.

**[Full Article](#)**

## **Oil & Gas**

## **UNITED STATES**

### **Can I Get Rid of My Oil and Gas Lease? Can I Terminate My Oil and Gas Lease?**

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

**Rothman Gordon**

**Pittsburgh, Pennsylvania**

The primary or initial term of your oil and gas lease; e.g., the first five, seven, or ten years of your lease, is about to expire and you are unhappy with your lease. You may not be getting the royalties that you expected. Whatever the reason, you begin to ask yourself whether you can get rid of or terminate your oil and gas lease.

**[Full Article](#)**

## **Tax Law**

## **BRAZIL**

### **Brazil's Special Program for Regularization of Assets Abroad**

**By: [José Luis Leite Doles](#)**

**Barcellos Tucunduva Advogados**

**Sao Paulo, Brazil**

Following the international trend to encourage tax transparency, the Brazilian Government, by means of law no. 13,254 dated January 13, 2016, created a special program to encourage taxpayers to voluntarily disclose to the Brazilian authorities (the "Program") non reported investments, properties or rights ("Assets") sent or kept abroad or repatriated to the country but not declared or declared with omission or inaccuracy to the Brazilian authorities. Taxpayers resident in the country on December 31, 2014 are eligible to participate in the Program.

**[Full Article](#)**

## Refund of the German Value Added Tax

By: [Anka Hakert, LL.M](#)

**WINHELLER Attorneys at Law & Tax Advisors  
Frankfurt, Germany**

According to a provision of German value added tax law, the refund of value added tax paid in Germany requires the production of an original invoice. For the purpose of the electronic procedure, however, the transmission of a copy of the invoice was sufficient until the end of 2014. It has been only since the end of 2014 that scanned originals of invoices have had to be provided with the refund application transmitted by electronic means.

[Full Article](#)

## Telecommunications

### UNITED STATES

**The Telephone Message Conundrum Continues for Debt Collectors in New York**

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) and just two weeks after it begrudgingly ruled in *Nicaisse v. Stephens and Michaels Assocs, Inc.*, 2015 U.S. Dist. LEXIS 172073 (E.D.N.Y. Dec. 28, 2015), the Eastern District of New York has joined the debate of how to properly leave telephone messages.

[Full Article](#)

## Wills & Estates

### AUSTRALIA

**Superannuation Death Benefits and Executor Duties**

By: [Chris Herral, Esq.](#) & [Michael Klatt, Esq.](#)

**Carroll & O'Dea  
Sydney, Australia**

In yet another example of why it is perilous not to have binding death benefit nominations in place for your superannuation, the Supreme Court of South Australia has recently decided that executors have a duty to claim superannuation death benefits for an estate, even if they themselves are eligible recipients of the superannuation death benefits.

[Full Article](#)

## 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 Legal Malpractice - A Professional Liability Practice Group Compendium - September 2015](#)

[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.

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