Paradigm

INTERNATIONAL SOCIETY OF PRIMERUS LAW FIRMS

WINTER 2014

The Power of Primerus

How Does Primerus Help You?

Current Legal Topics:

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Latin America & Caribbean • Asia Pacific

Every lawyer in Primerus shares a commitment to a set of common values known as the Six Pillars:

Integrity
Excellent Work Product
Reasonable Fees
Continuing Legal Education
Civility
Community Service

For a full description of these values, please visit www.primerus.com.

About our cover

By joining together nearly 200 law firms in 45 countries around the world, Primerus offers clients the advantages of small and mid-sized firms combined with the global connections of big firms. The possibilities are endless.

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Primerus
The World's Finest Law Firms

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John C. Buchanan

The Power of Primerus

In October, Primerus members gathered for our annual Primerus Global Conference in Asheville, North Carolina. We had attendees from Brazil, Canada, Dominican Republic, Germany, Mexico, the Netherlands, Spain, Switzerland, Taiwan, the United Kingdom and the United States.

As we spent the weekend attending continuing legal education programs, official Primerus board and institute meetings, and social events, I was reminded of the countless success stories represented by the work of Primerus, its members and its clients. Sure, there are the referrals made and cases won, but the stories go far beyond that to clients who have found trusted advisors and lifelong friends, law firms that have made a profound difference in their communities, cultures that have been bridged and positive changes that have current and future impact on the legal profession.

In this issue, you will read some of those stories, coming directly from our clients and Primerus members. And there are undoubtedly hundreds more success stories out there.

One of the highlights of the Global Conference was when every Primerus member joined together to take the Six Pillar Pledge. Voices united, they stated:

As a member of the International Society of Primerus Law Firms, I pledge myself and my firm:

- *To provide my clients a high level of service and an excellent work product at a reasonable fee;*
- *To educate the public about the law and its importance to our society;*
- *To generously volunteer my services to serve my community;*
- *To the continuing pursuit of my own professional education and improvement;*
- *To civility in all my dealings with members of the bench and bar;*
- *And to integrity as my highest value in all decisions, large and small.*

I think this pledge summarizes why Primerus attorneys do such a good job for their clients. Whenever an organization of people, working together as a team, renders outstanding service or makes great products, the secret is in the culture of the organization. Does the organization have very high values and expectations that all of its members must meet?

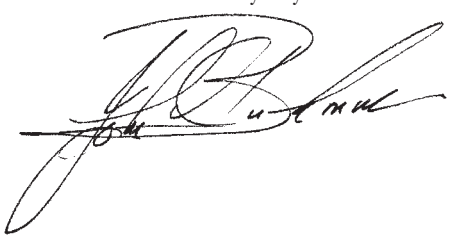
Businesses such as the Ritz-Carlton hotel chain or the Rolex watch company are examples of organizations with very high expectations, and that is the primary reason their services and products are outstanding. Everyone on the team is working very hard to make sure that happens. Likewise, the Primerus pledge that all members are expected to live by is the primary reason so many members and clients have a positive experience with Primerus.

I think another reason Primerus is the respected global organization we are is because we are comprised of small to mid-sized firms. I can assure you the caliber of the lawyers in all Primerus firms is equal to those at the world's largest law firms. In fact, many of our attorneys left the largest and most prestigious law firms to form their own high quality boutique firms. At these firms, clients receive a higher level of personalized, partner level service, at a much lower cost. Small and mid-sized firms have lower overhead, charge lower hourly rates, and they do not use their clients cases as a training ground for their young associates.

If the client's matter is very large, requiring many lawyers to work on it, such as a large merger or a major intellectual property law suit, then the mega firms are the clients' best choice. But for the vast majority of other legal matters, the best choice for competence, value and service is a high quality, small to mid-sized firm like those in Primerus who have been very carefully screened and must meet our Six Pillar standards.

But we all know it's tough to be a small, unaffiliated law firm without international connections in an increasingly global marketplace. That's where Primerus comes in. By joining together as nearly 200 firms in 45 countries around the world, we offer clients the advantages of small and mid-sized law firms combined with the global connections of big law firms.

I look forward to seeing our members continue to revolutionize the legal profession of the 21st century and create new success stories every day.



How Does Primerus Help You?

We frequently hear success stories about how Primerus is helping members and their clients. It might be how Primerus helped a client find a quality attorney when they needed legal help in a new jurisdiction – and the client now relies on Primerus as their go-to source for outside counsel. It might be how a Primerus continuing legal education (CLE) offering changed the way a client does business. Or it might be how Primerus has linked attorneys from around the world who are trying to transform the legal profession of the future.

So we're sharing those stories with you – directly from the mouths of the people we serve. We asked members and clients, "How does Primerus help you?" On the following pages we share what they said.

Making Connections Around the World

Robin F. Lewis, *member*

Partnering With Quality Firms

Brian Wagner, *member*

The Power of a Quality Brand

Reinier Russell, *member*

Helping Inside Counsel Find Quality Small Firms

Peter Barr, *client*

Finding People I Can Trust

Elizabeth Robertson, *client*

Making Connections Around the World

Robin F. Lewis is a real estate attorney for the Primerus member firm Mandelbaum Salsburg in West Orange, New Jersey. She recently completed a term as Chair of the Primerus Business Law Institute of North America.

During my seven years as a member of Primerus, and most recently as Chair of the Primerus Business Law Institute (PBLI) of North America, I have seen countless valuable connections develop among Primerus firms around the world. These personal connections are the most important way Primerus has helped my firm, our clients and other Primerus firms.

At the recent Primerus Global Conference held in October 2013 in Asheville, North Carolina, we welcomed Primerus members from around the world. Many international members also attended the Primerus Business Law Institute Symposium in June at the Georgia Aquarium in Atlanta. Members from the North America Primerus institutes traveled to Barcelona, Spain, last spring to attend the Primerus International Conference sponsored by the Primerus Europe, Middle East and Africa Institute. It's exciting that so many Primerus members are now travelling internationally to meet with each other throughout the year. There's no doubt that it's important to all of us to build bridges with our international partners to find areas where both referral sources and personal relationships can develop. Strengthening those ties will benefit everyone involved with Primerus.

While my firm, Mandelbaum Salsburg, does not look across international borders on a daily basis, we do have a number of clients doing work in international markets and believe it is very important to know that the global connection is there for them. In the U.S., we have had the opportunity to partner with fellow Primerus firms on numerous occasions, which has been a very important aspect of our Primerus membership. A perfect example of this is one of my own clients, a real estate owner with properties throughout the U.S. With this client, Primerus has been my go-to source for several years. If she had an issue in Delaware, Georgia, Texas, Arkansas – the first thing I did was call Primerus. I have found all of the firms we have worked with to be very helpful, and my client loves the fact that we have the ability to assist her anywhere with quality representation at a reasonable rate.

Our firm considers our affiliation with Primerus to be a long-term relationship, one that takes time to grow and develop. We are excited by the connections and opportunities it has yielded thus far, and we look forward to seeing where it goes in the future.

Partnering With Quality Firms

Brian Wagner is a litigator with the Primerus member firm Mateer & Harbert in Orlando, Florida.

Mateer & Harbert is a mid-sized, full service law firm located in Orlando, Florida, that services the interests of clients throughout the State of Florida. Being a Primerus member has expanded our firm's geographical boundaries and allowed us to serve our clients' legal issues that arise outside our own state. Our clients enjoy the lower legal fees and client-centered responsiveness of a mid-sized firm combined with the worldwide coverage of a large international law firm.

We have forged strong relationships with fellow Primerus member firms, specifically Smith Debnam in Raleigh, North Carolina. Our relationship with the Smith Debnam firm is a classic example of how the Primerus model is so successful. Not only do our two firms have a strong business relationship of both referring and receiving cases, we have also teamed up to give presentations on issues such as Enforcing Foreign Judgments and Fraud Involving Equipment Leasing and Financing Transactions.

This partnership has allowed us to meet the legal needs of our clients who have business outside of the State of Florida and outside the U.S. And because of the strict guidelines Primerus has for admission and retention, we feel very comfortable working with fellow Primerus firms.

I have even deeper confidence because I have personal relationships with so many fellow members established through Primerus events, webinars and practice group calls. In fact, when I travel to other cities for business, I make a point to visit with the attorneys at the local Primerus firm in that particular city.

Because of our involvement in Primerus, our clients can rest assured that if they have a legal issue that arises in another jurisdiction, our firm can introduce them to one of our valued partners in Primerus who shares our commitment to providing the best possible legal representation for our clients without sacrificing value.

The Power of a Quality Brand

Reinier Russell is the managing partner at Russell Advocaten, a Primerus member firm in Amsterdam, the Netherlands. He is a member of the Primerus Board of Directors and the Primerus Quality Assurance Board.

We have experienced tremendous benefit from the Primerus brand showing our clients that we are part of a global legal family that is there for them if they have legal needs anywhere in the world.

We have put the Primerus "P" logo on items including peppermints, pencils, matchboxes, stationery, business cards and flags outside our office. We have memo cubes on our conference room tables that show the Primerus "P," and people often ask about it. Our clients are very interested in learning more about Primerus.

The global focus of Primerus is very important to them. It gives our clients comfort knowing that if they have legal needs anywhere in the world, we can help them with a referral. For example, one of our clients had a legal problem in California. We connected him with Primerus member firm Neil, Dymott, Frank, McFall & Trexler in San Diego, and within 24 hours we had a discussion paper on the matter. The client is now working directly with that firm for other cases.

As a member of Primerus' Quality Assurance Board, I believe it's critical to maintain the highest of quality standards among our membership so that we can easily promote and rely on one another as if we were colleagues in the same firm. As an attorney, the relationships and experiences I have had through Primerus have benefited me greatly. I have learned a lot about the legal profession around the world, and I now have a much broader picture on how the profession will evolve in the future.

Finding People I Can Trust

Elizabeth Robertson is Chief Litigation Counsel for Crawford & Company in Atlanta, Georgia. She is also a member of the board of the Georgia Chapter of the Association of Corporate Counsel (ACC).

I became involved with Primerus because of my role as the Vice President of the Special Programs Committee of the Georgia Chapter of the ACC. I worked with Primerus staff to plan the Primerus Business Law Institute Symposium in June 2013 at the Georgia Aquarium in Atlanta. In April 2013, I also attended the Primerus Defense Institute Convocation in Boca Raton, Florida.

As a result of getting to know Primerus, I hired the Primerus member firm Zizik, Powers, O'Connell, Spaulding & Lamontagne in Boston to handle a case. I have been very pleased with the quality of legal services provided by Mr. Zizik and his staff, their responsiveness to my company's needs and their professionalism.

What I like about Primerus and its member firms is that they offer an excellent alternative to the mass market large firms. Sometimes you need a law firm that has more flexibility in management and that offers a better value. I also like that you know what the organization stands for and that they have a strict vetting process for quality before admitting and retaining a firm. From what I have seen, the Primerus network is a good place to go for high quality legal work and good value.

Also, one of the most important things I look for in outside counsel is someone I can trust. Based on my interactions with Primerus attorneys and positive feedback from other clients, they are very genuine and aligned with the interest of my company. At the PDI Convocation, a Primerus attorney gave opening remarks and shared that, just weeks before, he had witnessed the horrifying events that took place at the Boston Marathon. He concluded his presentation by encouraging Primerus members to call one of their clients when they returned to their offices the following week just to ask them how they can help them – whether personally or professionally. He said that lawyers ought to be in the business of doing good. I don't often hear this type of perspective expressed at professional events and found it very refreshing. Knowing that someone is committed to doing the "right thing" is an important factor that I consider when making a decision about who to partner with on a case. Ultimately, I want someone I can trust and whose conduct reflects my company's values.

Helping Inside Counsel Find Quality Small Firms

Peter Barr is General Counsel of Rack Room Shoes and Off Broadway Shoes, headquartered in Charlotte, North Carolina. He is a past president and a founding board member of the Charlotte Chapter of the Association of Corporate Counsel (ACC).

When I first learned of Primerus at an ACC National Convention a few years ago, I was very supportive of the concept of bringing together high quality small to mid-sized firms to help in-house counsel like me find great lawyers for reasonable fees throughout the country.

It is not uncommon for the in-house bar to hire a very large national firm with a well-known name to handle legal matters, based on the theory that the in-house attorney is doing everything he or she can by "hiring the best." I believe that the better approach is to find the appropriate lawyer for the appropriate case, not based on firm size or name recognition, but based on ability. If, as general counsel, I do that well, then I can honestly say that I hired the best at a significantly lower cost.

In my career, I have found smaller firms to be a tremendous resource. A decade ago, I was managing litigation for what was a Fortune 500 retailer with over 5,000 stores. I had success working with small insurance defense firms with excellent trial lawyers that were significantly less expensive than large firms. You just can't beat the expertise that you get from trial attorneys in small or mid-sized litigation firms.

We recently retained a Primerus attorney for a commercial lease dispute and received an incredible value. Our Primerus attorney represented us ably through discovery, depositions and settlement. The case settled on favorable terms and our legal expenses were very low.

Primerus' continuing legal education (CLE) offerings have been a tremendous benefit to me. In fact, they are some of the best CLEs I attend. Their CLEs are never boring and are always informative and include practical advice and clear lessons. That's one way that I know Primerus attorneys are good trial lawyers – they can clearly present CLEs in an entertaining manner.

In September, I attended the Primerus Defense Institute Insurance Coverage & Bad Faith Seminar in Chicago. The Primerus lawyers presented a mock trial on a commercial litigation matter. It was wonderfully entertaining and informative. Moreover, I took away not only clear and convincing evidence that these Primerus attorneys are very good at what they do, but also important information and advice that I will use in working with my internal clients.

At the Primerus social events, I have found the members to be stand-up people who get along well with one another. That good rapport among the Primerus attorneys tells me I can be assured that a Primerus attorney in one city will refer me to someone they know well and trust in another city. That rapport, along with my experience with these attorneys, tells me that I can rely upon the Primerus network of law firms.

Richard R. Beresford

David C. Tingstad

The Value of a Lawyer's Use of Sound Independent Judgment

We have all encountered the results of a poor decision made as a result of a limited perspective, lack of due diligence and just plain insufficient effort. Good lawyers bring their clients more than just a different perspective; they bring them the benefit of their detached analysis, careful questioning and sound judgment. In this article, we will discuss what separates Primerus lawyers from others: the Primerus lawyers' use of sound independent judgment.

Most lawyers are able to inform a client about the applicable law and leave it to the client to make their own decision as to how to apply the law. We believe better lawyers add value to their clients by the use of their sound independent judgment rather than passively accepting and acting upon their client's direction. Clients expect their lawyers to provide the benefit of their experience and judgment, discuss thoroughly the various alternatives, and, where at all appropriate, recommend a preferred course of action and strategy. This process involves hard work and discipline.

Sound Independent Judgment

We start with "independent." Our sound judgment must be utilized with an analysis detached from harmful emotions such as a quest for vengeance, fear of the unknown or greed. Our judgment must not be contaminated by the clients' interpretation of their current situation. Rather, we must engage in careful questioning and investigation into the facts. We have learned that, unless we are careful, our clients tell us the "good news," but we hear the "bad news" from the other side. Although we are advocates for our clients, we must counsel them independent of our advocacy role.

Next, we use our judgment. Judgment does not mean arrogantly believing we know better than our client, nor does it mean that we pre-empt our clients' decision making or bias the courses of action we present to our client. It means using our experience and common sense to arrive at a sound decision. Too often, the failure to make a decision results in unfortunate consequences. Using our judgment sometimes means collectively "sticking our noses out" to get our clients to make a decision rather than passively waiting.

Finally, our independent judgment must be sound. "Sound" means the process of selecting the right course of action. The right course of action must be evaluated from a moral, as well as a strictly legal perspective. We may not be "right" every time, but we are sound in our process of arriving at our judgment for our clients. As lawyers, we should be advocates of good to our clients, which also serves a societal benefit. One of the reasons we love what we do is that we do our best every day to make our clients and our society better.

Richard R. Beresford has been practicing law for 41 years and is the former Managing Partner of Beresford Booth PLLC. His practice involves business, banking and real estate matters both in the transactional and litigation areas.

David C. Tingstad is the Managing Partner of Beresford Booth PLLC and chairman of the firm's business group. For the last 18 years, David's practice has focused on business and real estate issues with an emphasis on limited liability companies (LLCs). He frequently represents businesses involved in all phases of formation, operation, dispute, dissolution and winding up. He has extensive experience conducting presentations regarding complex legal issues involving LLCs.

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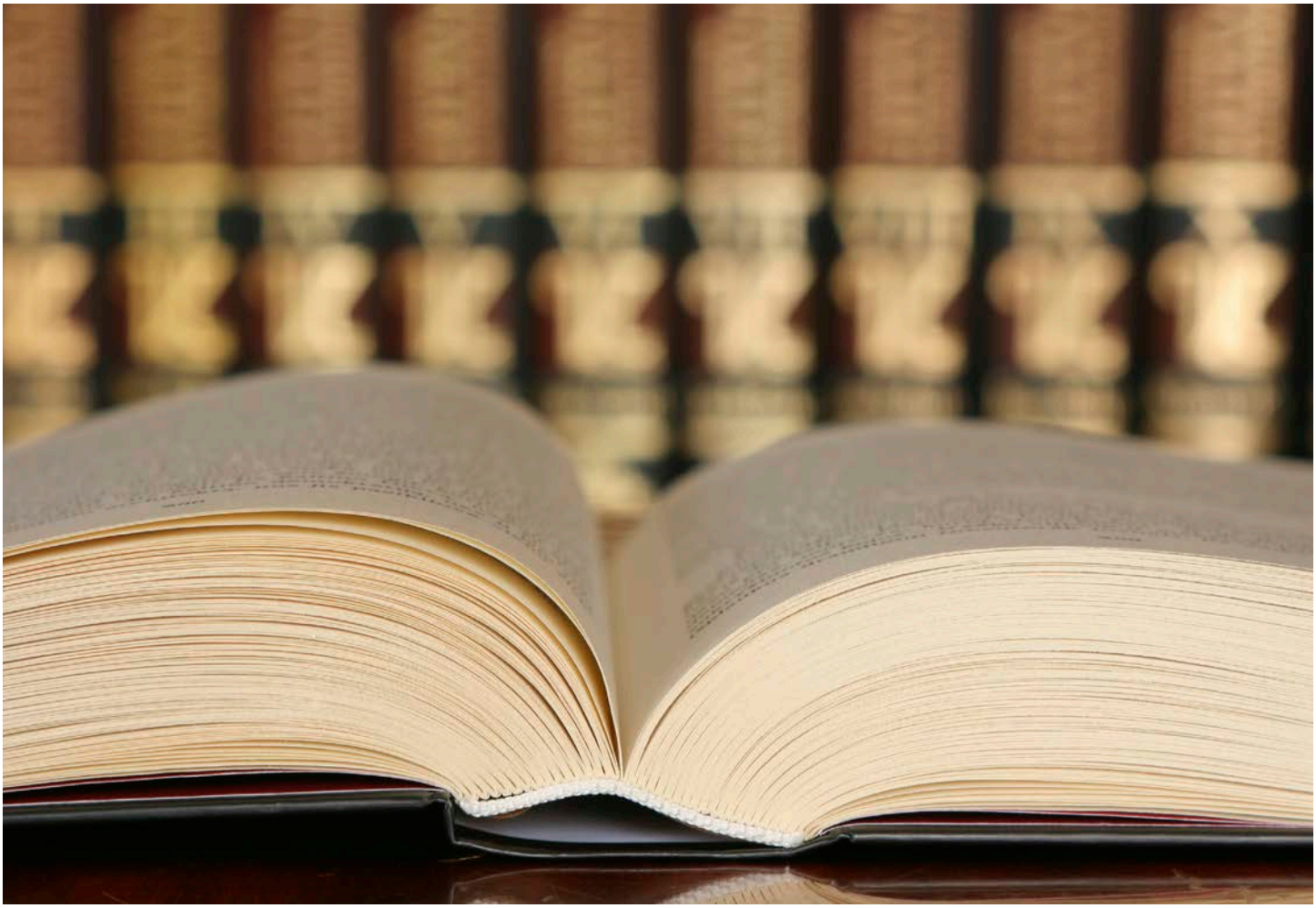

Adding Value

What value does a client get from our use of sound independent judgment? Plenty! From a litigation perspective, the determination of which battles to fight and how to fight them is critical. Before "starting the war," we consider the various potential results of litigation, the probability of achieving each result, and the benefit to the client arising out of each. We question and educate the client, review the documents and strategize with the client. We attempt to get shoulder-to-shoulder with our client and then make a recommendation. Through this process, we attempt to get the client to understand their case from a different perspective and consider our recommendation. This process is time consuming and difficult, but in the end leads to cost savings and a better result. In fact, many times the client has great ideas that come about through this process, and the client gets a result far better than they could through litigation – or we are able to discover the weakness in the opposition's position and efficiently use that weakness to achieve our clients' objectives.

From a transactional perspective, working to evaluate the strategy associated with "big picture" issues such as the structure of a transaction or the minutiae of the "boilerplate" language of a limited liability company's operating agreement can mean the difference between getting a deal done and the death of a company. All lawyers know how to find the risks associated with a transaction, but the better lawyers, the Primerus lawyers, add value by using their independent judgment to find solutions to the problems associated with that risk. It's the difference between robotically filing a document with the Secretary of State and thinking through the entire scope of the transaction for the client's overall benefit. It's the difference between a "deal breaker" and a "deal maker."

There are as many examples of the value added by sound independent judgment as there are clients and practice areas.

Every Primerus lawyer subscribes to the Six Pillars of Primerus: Integrity, Excellent Work Product, Reasonable Fees, Continuing Education, Civility and Community Service. We take these pillars seriously, and they inform our sound judgment with every client we represent.

We use a process of detached investigation and analysis, coupled with our experience and common sense to arrive at the right course of action. This is sound independent judgment. Through the use of our sound independent judgment, we add direct value to our client and our society. The use of sound independent judgment is not a fungible commodity in today's legal market – it is a rare find. P

Andrew Schreck

Recent Decisions Affecting Maritime Jurisdiction In Employer Liability Claims

Employers with operations on or near waterways often face exposures under the Longshore and Harbor Workers' Compensation Act (LHWCA) and the Jones Act. This article provides a brief review of recent federal cases affecting jurisdiction under these laws.

Jones Act – What is a Vessel?

In 2005, practitioners thought the U.S. Supreme Court had finally answered this question in *Stewart v. Dutra Construction Company*, 543 U.S. 481. Dutra's dredge SUPER SCOOP is a floating platform. It removes silt from the ocean floor and dumps it into adjacent scows (small barges). Stewart was injured and sued Dutra claiming he was a seaman. The dispositive issue was whether the dredge was a vessel. The court defined a "vessel" as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." Although the dredge's primary purpose was not navigation or maritime commerce, the court concluded the dredge was a vessel because it was "capable of being used as means of transportation on water."

This year, the Court decided *Lozman v. City of Riviera Beach, Florida*, 133 S.Ct. 735 (2013). Lozman's floating home was a plywood house-shaped structure, stored at a marina owned by the City of Riviera Beach. The City filed suit seeking dockage fees. Lozman moved to dismiss for lack of admiralty jurisdiction. The district court found the structure to be a vessel. The 11th Circuit affirmed, deciding the home was a vessel because it was "capable of moving over the water" despite Lozman's subjective intent to have the structure remain moored indefinitely. *Lozman* appeared to move away from the *Stewart* test, reasoning that a contrivance or watercraft may be a vessel when a "reasonable observer looking at its physical characteristics and activities could conclude that it was designed to any practical degree for carrying people or things on water."

In most maritime cases, "vessel" status is obvious. Outlier cases, including structures used in the offshore energy industry, will create challenges under the *Dutra* and *Lozman* tests for vessel status. In *Mendez v. Anadarko Petroleum Corporation*, 2012 U.S. App. LEXIS 6405 (5th Cir. 2012) Anadarko won dismissal of Mendez's Jones Act claims, ruling the spar structure Mendez was working on was not a "vessel."

The spar, RED HAWK, was a floating gas production platform moored 5,000 feet in ocean water, 210 miles from Sabine Pass, Texas. Since 2004, it was secured to the ocean floor by six anchor moorings.

Under the Jones Act, a plaintiff must first establish that he has a "connection to a vessel in navigation (or an identifiable group of such vessels) …" The court noted from Stewart that "a watercraft is not capable of being used for maritime transport in any meaningful sense if it had been permanently moored or otherwise rendered practically incapable of transportation or movement," and held the RED HAWK was not a vessel because it was permanently moored. Moving the spar would take two months, involve detaching all moorings, severing

Andrew Schreck handles a wide variety of civil litigation matters including personal injury, premises liability and wrongful death defense, business and commercial litigation, and employment law. He also defends clients from claims arising under Texas' workers' compensation laws, the Federal Employer Liability Act, the Jones Act, the Longshore Act (and its extensions), and other land transportation and maritime personal injury claims.

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pipelines, and would cost $42 million. The *Mendez* court noted that "at most that the RED HAWK is theoretically capable of maritime transport, but not practically capable."

Mendez is a recent example of the critical nature of the vessel question – if the structure is not a vessel, the plaintiff cannot sue under the Jones Act.

Lozman was recently followed in *Mooney v. W&T Offshore Inc*., 2013 U.S. Dist. LEXIS 30091 (E.D. La. 2013). Mooney alleged he was a Jones Act seaman because the tension-leg platform (TLP) operated by his employer was a "vessel." The court disagreed and dismissed the suit, relying on *Lozman*: "a reasonable observer looking at the structure's physical characteristics and activities, would not consider the vessel as being designed for carrying people or things over water." The court compared the TLP to floating gas production platforms and floating casinos, which do not qualify as vessels under current law; it was permanently moored to the seafloor. Under *Lozman's* "reasonable observer" test, vessel status was denied.

Recent Cases Involving Jurisdiction under the LHWCA

The Fifth Circuit recently adopted a strict interpretation of "adjoining area" for jurisdiction under the LHWCA (the LHWCA applies to "adjoining areas" used for maritime activity); *New Orleans Depot Services, Inc. v. Director OWCP*, 718 F.3d 384 (5th Cir. 2013)(en banc) (NODSI). NODSI overruled the 1980 Fifth Circuit *Winchester* case which held that an adjoining area (a stevedore's gear room about ½ mile outside the fence boundary of the Port of Houston) need not be directly contiguous to navigable waters.

NODSI employee Juan Zepeda was injured in the "Chef Yard" facility in New Orleans. NODSI repaired shipping containers and chassis. Chef Yard, with access to the Chef Menteur Highway and rail transportation, is a small industrial park located about 300 yards from the Intracoastal Canal.

All equipment NODSI serviced was delivered to and taken from the Yard by truck with no access to the canal. An administrative law judge held the Yard was close enough to navigable waters for jurisdictional purposes. The Benefits Review Board affirmed.

The Fifth Circuit overruled *Winchester* with a plain language approach to interpreting the Act: "The plain language of the LHWCA requires that coverage situs actually adjoin navigable waters" and not be "in the general geographic proximity of the waterfront."

What are the Outer Limits of the LHWCA?

NODSI dealt with the Act's landward limits but how far does the LHWCA go seaward? The question was recently addressed in *Keller Foundation v. Tracy*, 696 F.3d 835 (9th Cir. 2012), cert. denied 569 U.S. (2013). In Keller, a worker was injured while employed in the ports of Singapore and an Indonesian ship yard. Previous lower court decisions had determined that the LHWCA did not apply to workers injured on foreign territorial waters.

But more recently, in *Weber v. S.C. Loveland Company*, 28 BRBS 321 (1994), a longshoreman injured on a barge in Kingston, Jamaica, was held to be covered under the LHWCA because the worker was a U.S. citizen, employer was U.S. based, and the vessel was under the American flag.

In *Keller*, the court agreed with the Plaintiff that the navigable waters of the U.S. includes the high seas, but drew the line where those high seas intersect with foreign territorial waters, and held that in the absence of clear congressional intent to include injuries in foreign territorial waters in Section 903(a), there is a presumption that the LHWCA *does not apply* extraterritorially.

In another 2012 landmark decision, the Court extended the Outer Continental Shelf Lands Act (OCSLA), to land injuries. (Congress enacted OCSLA in the 1950s and extended the LHWCA to claims that fall under the OCSLA.) *Pacific Operators Offshore, LLP v. Valladolid*, 132 S. Ct. 680 (2012) ("Valladolid"). The outer continental shelf (OCS) is a subsea area that begins offshore from the coastal states where their territorial waters end. Juan Valladolid was killed while performing maintenance work at the employer's onshore oil and gas processing facility in Ventura County, California. Ninety-eight percent of his other duties were on OCS platforms. His widow filed for benefits under OCSLA, which provides benefits for injury or death to an employee occurring "as a result of operations connected with the exploration, development, removal and transportation of natural resources from the seabed and subsoil of the outer continental shelf." For many years, courts had held OCSLA had a situs requirement limiting jurisdiction to injuries occurring on the OCS. In *Valladolid*, the Court extended OCSLA coverage to work-related injuries occurring away from the OCS, provided the work has a "substantial nexus" to the employer's operations on the OCS.

Before January 2012, Federal Courts disagreed about OCSLA jurisdiction. The Fifth Circuit refused to extend OCSLA to injuries outside the OCS. The Third Circuit took a broader view, applying OCSLA even to land injuries, if the injury would not have occurred "but for operations" on the OCS.

Valladolid rejected these views and adopted the Ninth Circuit's "substantial nexus" test. Practitioners need to follow subsequent cases to probe the landward limits of OCSLA jurisdiction. *Valladolid* will likely result in more claims for land/near-land injuries under OCSLA that were formerly covered under state law.

Conclusion

The courts have recently been active defining the parameters of jurisdiction under the Jones Act, the LHWCA and the OCSLA. Employers and their counsel must remain current on these and subsequent decisions given the risks and substantial dollars at stake. P

Bianca S. Watts

Sharing Responsibility Under the Patient Protection and Affordable Care Act

Many employers are struggling to understand some of the more technical aspects of the Affordable Care Act ("ACA") and its effect on employer budgets. Specifically, employers are looking for guidance on the complicated issue of how to determine whether workers qualify as full-time employees ("FTEs") for purposes of the ACA's employer shared responsibility provision and how to comply with the limitation on waiting periods before insurance coverage begins. Fortunately, the IRS has issued guidance that sheds light on the application of the employer shared responsibility rules and the 90-day waiting period limitation.

The Basics of the Shared Responsibility Provision

Most employers are familiar with the individual mandate, which requires individuals to obtain health insurance either through their employer or through a covered Health Insurance Exchange or face penalties. However, many employers remain confused about the employer mandate and basic requirements of the "shared responsibility" provision. The ACA's employer shared responsibility provision applies to employers with 50 or more full-time employees or FTEs (employees working 30 or more hours per week). It requires such employers to provide FTEs "minimum essential coverage" or pay a penalty based on the number of FTEs that are not offered coverage. "Minimum essential coverage" means group health coverage under an eligible employer-sponsored group health plan, defined as a plan offered to employees of an employer that is a governmental plan or a plan or coverage available in the individual or group market.

Beginning in 2014, each covered employer will be assessed a penalty if any FTE is certified as eligible to receive a premium tax credit when buying insurance in a state-based "health insurance exchange." The annual penalty is $2,000 per FTE in excess of 30 workers.

New Safe Harbor Guidelines

The IRS's guidance addresses "safe harbor" methods that employers may use to determine which employees are treated as FTEs for purposes of the employer shared responsibility provision. For ongoing employees, employers are generally permitted to apply a "look back" method that uses "standard measurement periods" and the "stability periods" that follow them. The "standard measurement period" is the period of time an employer chooses to apply to determine whether ongoing employees are FTEs. An "ongoing employee" is one that has been employed for at least one standard measurement period. The period must be at least three but not more than 12 consecutive months. The "stability period," the period for which the employee's status as an FTE or non-FTE is locked in regardless of hours worked, must run at least six calendar months and at least as long as the standard measurement period. An employee who does not average at least 30 hours per week during the standard measurement

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period can be treated as a non-FTE during the stability period that follows the standard measurement period.

Employers are also permitted to use an administrative period between the standard measurement period and the stability period to determine which ongoing employees are eligible for coverage and enroll these employees. This administrative period may last up to 90 days, but may neither increase nor decrease the measurement or stability period.

If a new employee is reasonably expected to work full time at the start date, no penalties will be assessed as long as the employer offers coverage to the employee before the end of the 90-day waiting period discussed in this article. There is also a special safe harbor for determining whether variable-hour and seasonal employees are FTEs. Employers can determine whether these workers are FTEs using an initial measurement period of three to 12 months. The employer measures the hours of service completed during that period to determine whether an employee completed an *average* of 30 hours of service per week.

The 90-Day Waiting Period Limitation

The ACA bars a group health plan from imposing a waiting period for enrollment in group health coverage of more than 90 days. "Waiting period" is defined as the period that must pass before coverage becomes effective for an employee or dependent who is otherwise eligible to enroll under a group health plan's terms. The plan may impose other substantive eligibility conditions as long as the condition is not designed to avoid the 90-day waiting period limitation.

Notice of Liability

The IRS will inform employers of their potential liability for violation of the shared responsibility provision and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.

What This Means For You

To prepare for the employer mandate and avoid costly penalties, employers should have already taken a close look at the composition of their workforce to determine which employees qualify as FTEs. Employers with specific questions regarding their obligations under the ACA should consult an attorney.

William E. Mason

Briton S. Collins

The Fiduciary Exception to the Attorney-Client Privilege: Who is the Client in the Administration of ERISA Benefits?

Imagine the following scenario: Janet, the employee benefits plan administrator for ABC Corporation, meets with Steve, an attorney, for legal assistance in deciding whether to deny benefits to Tom, an ABC Corporation employee who is appealing a prior denial of benefits. After conferring with Steve, Janet decides to deny Tom benefits. Tom subsequently brings an Employee Retirement Income Security Act (ERISA) claim against the plan to recover his benefits, and he demands access to the contents of Janet and Steve's prior communications.

Is Tom entitled to access? Plan administrators and attorneys have traditionally assumed that the attorney-client privilege protects such communications as confidential under the belief that plan administrators, and not plan beneficiaries, are the attorneys' clients. Depending on the jurisdiction, however, Tom may be entitled to access to Steve and Janet's communications due to the "fiduciary exception" to the attorney-client privilege. This article will explore the ramifications of the fiduciary exception to the attorney-client privilege in the fiduciary and plan beneficiary context.

The fiduciary exception provides that when an attorney gives advice to a client who is acting as a fiduciary for third-party beneficiaries, the attorney owes the beneficiaries a duty of full disclosure.[1] In the employee benefits context, the fiduciary exception addresses the notion that "at least as to advice regarding plan administration, a trustee is not 'the real client' and thus never enjoyed the privilege in the first place."[2] According to this rationale, beneficiaries should, as the clients, have access to the substance of legal communications relating to plan administration, especially since the legal advice is often sought for the beneficiaries' benefit and at their expense.[3] Ironically, the fiduciary exception is not really an exception at all, but instead defines the scope of the attorney-client relationship to include beneficiaries, making them deserving of the attorney-client privilege.[4] Therefore, according to the fiduciary exception, attorneys owe beneficiaries a duty of full disclosure and cannot rely on the attorney-client privilege to withhold from beneficiaries the substance of advice given to fiduciaries.

In the ERISA context, the fiduciary exception generally only applies to communications with an attorney related to plan administration, including benefits decisions, but not to communications following a final benefits decision or "addressing a challenge to the plan

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administrator in his or her personal capacity."[5] For instance, in *Geissal v. Moore Medical Corp.*, it was held that an employee whose COBRA coverage was terminated after the plan administrator conferred with an attorney was entitled to "know what the legal opinion was, in oral and written forms."[6] Courts have rationalized applying the fiduciary exception to pre-decisional legal advice, despite the prospect of post-decisional litigation, on the grounds that "denying benefits to a beneficiary is as much a part of the administration of a plan as conferring benefits to a beneficiary."[7] In these instances, all plan beneficiaries, including the ultimately disappointed beneficiary, are entitled to know what the legal opinion was.[8]

The fiduciary exception may continue to apply where a claimant files a timely administrative appeal of a denial of benefits, since the benefits decision is not considered "final" during the pendency of the administrative appeal.[9] However, where a claim presents a "real and substantial possibility of litigation," the fiduciary exception typically does not apply. For example, in one case, communications following a claimant's counsel's argumentative correspondence demanding payment of the claim in question and threatening the pursuit of claims in court were ruled protected by the attorney-client privilege.[10] It is unclear whether communications occurring after a final benefits decision remain subject to the fiduciary exception for all beneficiaries other than the disappointed beneficiary; however, language from existing cases suggests that once a final benefits decision has been made, or there is a real and substantial possibility of litigation, the fiduciary may obtain legal advice without fear of any beneficiaries gaining access.[11]

Whom the attorney's advice benefits is also important in determining the fiduciary exception's applicability. Because an employer often wears two hats in plan administration – one involving the fiduciary duty owed to its employees and the other involving the employer's own interests in areas such as plan design, amendment and termination[12] – whether the attorney-client privilege applies to a communication requires an examination of its content and context to determine whether it was for the benefit of the beneficiaries or employer. For example, when a communication is for the benefit of an employer in connection with its consideration of plan adoption, courts generally find that the communication encompasses a non-fiduciary matter and is inaccessible by beneficiaries.[13]

What is the best practice for attorneys and plan administrators in light of the fiduciary exception?

Because jurisdictions are increasingly recognizing the fiduciary exception, it is wise for attorneys and plan administrators in jurisdictions that have not yet addressed the exception to nonetheless manage their affairs as if it applies. An important consideration for attorneys thinking strategically will be properly structuring their relationship and interaction with benefits staff with regards to counseling that occurs before an ERISA claim is filed. The first blush reaction – to avoid creating anything but the most bland record of counseling and advice sessions – is probably an over-reaction and fails to account for the deference courts pay to administrators in reviewing benefits decisions under the "arbitrary and capricious" standard. A plan administrator's decision is considered arbitrary and capricious only when it "is without reason, unsupported by substantial evidence or erroneous as a matter of law."[14] Therefore, rather than minimizing the advice or the record, the best practice is for the administrator and attorney to instead, consistent with ERISA principles, continue to have the robust discussions warranted by benefits claims, including the pros and cons of the facts, strengths and weaknesses of applicable law, ambiguities in plan documents, etc. The advice and its bases should be recorded and preserved in all mediums to ensure that there is a clear, contemporaneous record of the administrator's non-arbitrary, full and diligent consideration of the claim. In the event the claim is denied and suit is brought, discovery of the record, including the advice of plan counsel, may help justify and support the reviewing court's decision to dismiss the claim. P

1 *Moss v. Unum Life Ins. Co.*, 2012 WL 3553497, at *10 (6th Cir. Aug. 17, 2012)

2 *United States v. Mett*, 1778 F.3d 1058, 1063 (9th Cir. 1999).

3 *Riggs Nat. Bank of Washington, D.C. v. Zimmer*, 355 A.2d 709,712 (Del. Ch. 1976).

4 *Moss*, 2012 WL 3553497, at *10.

5 *Id.* at *11.

6 *Geissal v. Moore Medical Corp.*, 192 F.R.D. 620, 625 (E.D. Mo. 2000).

7 *Lewis v. UNUM Corp. Severance Plan*, 203 F.R.D. 615, 620 (D. Kan. 2001).

8 *Geissal*, 192 F.R.D. at 625.

9 *Thies v. Life Ins. Co. of North America*, 768 F. Supp. 2d 908, 912 (W.D. Ky. 2011).

10 *Id.* at 913.

11 *Shields v. Unum Provident Corp.*, 2007 WL 764298 at *4 (S.D. Ohio March 9, 2007).

12 *Hudson v. General Dynamics*, 73 F. Supp. 2d 201, 202 (D. Conn. 1999).

13 *Solis v. Food Employers Labor Relations Ass'n*, 644 F.3d 221, 228 (4th Cir. 2011).

14 *Miller v. American Airlines, Inc.*, 632 F.3d 837, 845 (3rd Cir. 2001).

Chi Chung

What's In Your Warranty?

A warranty is simply a promise. It generally is a promise that what you are selling is of a particular quality and is being sold without defect. An express (written or oral) warranty can give you a competitive edge. It can be used to improve your company's reputation and brand, build customer confidence or promote sales of a new product. Warranties are common place and are provided or implied with small and large purchases. This article aims to shed light on the oftentimes confusing world of warranties.

Warranties are of two types: express and implied. Implied warranties are unwritten and are implied with the sale or lease of the product. It is a promise the product will do what it is meant to do. There are two types of implied warranties: the implied warranty of merchantability and the implied warranty of fitness for a particular purpose. The implied warranty of merchantability is a promise that the product reasonably conforms to the public's general expectations. For example, the implied warranty of merchantability of a car is it will turn on and run, a refrigerator will keep food cold, a lawnmower will cut grass, and a hair dryer will dry hair. The implied warranty of fitness for a particular purpose is more specific. It is a promise that the thing you are selling will conform to a particular purpose versus an ordinary purpose. An example is shoes purchased for mountain climbing versus shoes for walking. Implied warranties are governed by each state's version of the Uniform Commercial Code ("U.C.C.").

Express warranties can be oral or written. Our focus here is on written warranties.

Written warranties are governed by state laws and the Magnusson-Moss Warranty Act, codified at 15 U.S.C.A. 2301 to 2312 ("MMWA"), a federal statute passed in 1975 to protect consumers and to promote competition. There is no requirement that you provide a written warranty, but if you do, the MMWA should be your guide.

The MMWA[1] defines "written warranty" as a writing provided with the sale of a consumer product, which relates to the nature of the material or workmanship of that product, and which promises that such material or workmanship is defect free or will meet a specified level of performance over a period of time. A writing provided in connection with the sale of a consumer product by which the seller promises it will refund, repair, replace or take other remedial action if the product fails to meet the stated specification also qualifies as a "written warranty."

There are two types of written warranties: full warranty and limited warranty.

If your written warranty qualifies as a "written warranty" under the MMWA and it covers an item costing more than $5.00, then the contents of the warranty must be in a single document, in clear, easy to read, and easily understandable language. It must be void of deceptive and misleading terms. The terms must be fully and conspicuously disclosed.

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The MMWA enumerates a list of the possible terms and conditions that the Federal Trade Commission may require to be included in a written warranty.[2] The terms and conditions include the warrantor's name and address; all those benefiting under the warranty; the products or parts covered; the parts not covered; a statement by the warrantor of what actions they will take in the event of a defect, at whose expense, and for how long; a statement of the consumer's responsibility; exceptions and exclusions to the warranty; the procedure which the consumer should follow to obtain warranty service; information regarding the availability of any informal dispute settlement procedure (if there is one); a description of the legal remedies available to the consumer; and time for performance under the warranty.

The written warranty must be made available to the customer prior to purchase. This does not mean you have to actually provide it to the customer but only that you make it available. For example, a written warranty sticker attached to the inside of a refrigerator is satisfactory.

If your written warranty covers an item costing more than $10.00, then you must clearly title your warranty as either a "full (statement of duration) warranty" or "limited warranty."

A full warranty meets the federal minimum standards[3] set by Congress. Basically, a full warranty applies to the first and all subsequent owners during the warranty period. It is provided free of charge. The customer cannot be charged for costs of returning, removing or reinstalling. If the warrantor is unable to repair after a reasonable number of attempts (interpreted by some courts as two to three attempts), the customer is entitled to either a replacement or refund. There is no requirement that the customer must do something, such as return the warranty registration card, to obtain warranty service.

A limited warranty does not meet at least one of the federal minimum standards listed at 15 U.S.C.A. § 2304(a). If the warrantor breaches a limited warranty, the customer may or may not be entitled to a replacement or refund. The MMWA does not specifically provide for remedies for a limited warranty. Rather, the remedies are found in each state's version of the U.C.C. One feature of the MMWA, and the one of most concern to businesses involved in breach of warranty litigation, is its fee shifting provision whereby successful claimants may be awarded legal fees and costs.[4]

If your written warranty is a limited warranty, then you may limit the duration of any implied warranties to the duration of the limited written warranty. An example of this is a vehicle manufacturer often times will limit the implied warranties to the 3 years/36,000-mile limited written warranty. The limitation must be clear and prominently displayed. If you are providing a full written warranty, you cannot limit, disclaim or modify the implied warranties.

It is also possible to have a hybrid warranty[5], one which includes both a full and limited warranty, as long as it is clearly labeled.

As the saying, "a stitch in time saves nine" goes, if you currently offer express warranties with your product or are contemplating offering a warranty to gain that competitive edge, now is the time to check if your warranty is up to par with your state's U.C.C. and the MMWA.

In our increasingly litigious society, taking such preventive measures is a routine necessity. P

1 15 U.S.C.A. § 2301(6)
2 15 U.S.C.A. § 2302
3 15 U.S.C.A. § 2304(a) lists the Federal minimum standards.
4 15 U.S.C.A. § 2310(d) (2).
5 15 U.S.C.A. § 2305.

Alan M. Dunn

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Major New Reforms of U.S. Export Control Laws Force Businesses and Individuals to Comply With Changing Export Licensing Rules

Manufacturers, exporters, brokers and others involved in exporting certain goods and technology are facing major changes to export licensing rules under new reforms to the U.S. export control laws. A wide range of products, materials and technology are affected by export control reforms that went into effect in October 2013 and additional reforms being implemented in 2014. All participants in the export chain from manufacturer to shipper must ensure that they understand how the changes to these laws apply to their products and activities.

Export controls are restrictions on exports implemented for various national security purposes that require the issuance of export licenses by various agencies of the U.S. government before exporting a wide range of goods. The export control laws capture a broader range of products, software, technology and services than many realize.

Importantly, failure to comply with these laws can result in severe criminal and civil penalties, including imprisonment. Even a single inadvertent violation can result in hundreds of thousands of dollars in penalties. For example, in August 2013, Meggitt-USA, Inc. agreed to pay a civil penalty of $3 million (plus $22 million suspended) to settle allegations that it violated export control laws. In January 2013, a Pennsylvania man was sentenced to 42 months in jail for knowingly misclassifying electronic amplifiers. Although the amplifiers were eligible for export to the end-user countries under the proper license, his explanation was that he was "too busy" to obtain the licenses and was "overwhelmed at work."[1] Also in 2013, Aeroflex, Inc. and Raytheon Company each agreed to pay civil penalties of $4 million (plus $4 million suspended) for alleged export control violations.

Many violations arise from inattention, improper self-classification of exported products or inadequate compliance programs. In some instances, companies have tried to determine the correct controls, but missed certain subtleties in the laws and committed unintentional violations. Such mistakes are not uncommon.

The Export Control Reform Initiative

The Export Control Reform Initiative (sometimes referred to as the ECRI) was launched by the Obama Administration in 2009 based on the recognition that complicated export controls make exporting more difficult for U.S. businesses, discourage foreign companies from buying U.S. products and services, and do not reflect key U.S. national security concerns. The Reform Initiative seeks to identify the most sensitive items requiring strict controls, while streamlining and easing restrictions on items not as essential to U.S. national security concerns ("putting higher fences around fewer items").

This reform effort is focused on two of the major export control regimes – the International Traffic in Arms Regulations (ITAR), which regulate items on the U.S. Munitions List (USML), and the Export Administration Regulations (EAR), which regulate items on the Commerce Control List (CCL).[2]

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The ITAR, which are administered by the State Department's Directorate of Defense Trade Controls (DDTC), strictly control items listed on the USML. The USML generally includes military and space items; certain related parts, components, accessories, attachments and technical data, as well as defense services. All U.S. manufacturers (even those that do not export) as well as exporters and brokers of items listed on the USML must register with the State Department. Virtually all exports of items appearing on the USML require export licenses.

The EAR regulations are administered by the Department of Commerce's Bureau of Industry and Security (BIS) and provide for controls on the items listed on the CCL. Before the recent reforms, the CCL generally covered "dual-use" products (*i.e.*, products and related materials, technology, and software that have both commercial and potential military applications). A basket category under the CCL – EAR99 – covers everything not specified or controlled by another agency, including purely commercial items. Items listed on the CCL are subject to differing export licensing controls depending upon their classification, destination countries, end-users and end-uses. The EAR also provides license exceptions, which are not available under the ITAR.

The new reforms are intended to limit the items on the USML to those that are inherently military or those that provide a "critical military or intelligence advantage" to the United States and are almost exclusively available from the U.S. Other items that are "specially designed" for military applications but do not continue to warrant the strict ITAR controls imposed on the USML are being moved to the CCL and subject to the less stringent, but nonetheless complicated, controls of the EAR. The items moved from the USML to the CCL will appear in a new "600 series" of the CCL, where many of them will now be eligible for exceptions to the export license requirements.

In many instances, license requirements will be relaxed under the Reform Initiative, which may present opportunities for manufacturers and exporters. However, they must still navigate complicated codes, requirements and exceptions. For example, anyone seeking to export an item under the new "600 series" of the CCL will have to determine the proper classification of the item, the applicable controls and any applicable license exceptions based on value, use or end users. A thorough fact-specific analysis will be required for every relevant product, and BIS has cautioned that reliance on *prior* determinations may be improper.

The first wave of reforms took effect on October 15, 2013 and involved:

- aircraft and associated equipment,
- gas turbine engines and associated equipment and
- clarification of the new term "specially designed," which will be used in classifying items under the USML and CCL.[3]

On October 25, a new rule defining "brokering" took effect, which should be of particular interest to lawyers and others facilitating export transactions.[4] And on January 6, 2014, a second wave of major reforms will take effect involving:

- vessels of war,
- navy equipment,
- military vehicles,
- auxiliary military equipment and
- submersibles.[5]

Further export control reforms may be expected in 2014 in areas such as:

- explosives,
- training equipment,
- satellites,
- electronics with military applications and
- nuclear-related technologies and materials.

Companies particularly at risk of encountering problems in complying with the revised regulations include:

- Companies that produce parts, components, accessories, attachments and software for the items involved in the reforms;
- Companies that have not yet implemented robust export compliance programs; and
- Companies that have relied on prior agency determinations regarding which controls are applicable to similar products.

Penalties for Export Control Violations

As currently enforced, a single ITAR violation can result in civil penalties of up to $500,000 and criminal fines of up to $1 million and/or imprisonment for up to 20 years, and an EAR violation can result in civil penalties of up to $250,000 or twice the value of the transaction, and criminal fines of up to $1 million and/or imprisonment for up to 20 years. Even unintentional violations can result in denial of export privileges, exclusion from practice and/or seizure and forfeiture of goods.

Conclusion

It is critical that manufacturers, brokers, companies and individuals responsible for exporting understand and comply with the changing export control rules. This requires a close examination of the new rules and a thorough analysis of the revised control lists for the proper classification of each and every product produced and/or exported. By carefully ensuring that everything is right before exporting, businesses and individuals can avoid major penalties. P

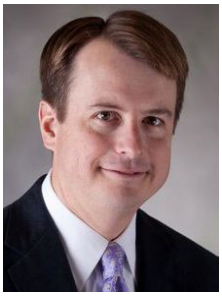
1 Press Release, U.S. Department of Justice, Pennsylvania Man Sentenced to 42 Months in Prison for Export Violations (Jan. 17, 2013).

2 The ITAR appear at 22 C.F.R. Parts 120-130; the EAR appear at 15 C.F.R. Parts 730-774. The Department of Energy and the Nuclear Regulatory Commission administer nuclear export controls, and the ATF administers controls regarding permanent imports of items listed on the U.S. Munitions Import List.

3 *See Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform*, 73 Fed. Reg. 22,660 (Dep't Commerce Apr. 16, 2013) (final rule); *Amendment to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform*, 73 Fed. Reg. 22,740 (Dep't State Apr. 16, 2013) (final rule).

4 *See Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions*, 73 Fed. Reg. 52,680, 52,690 (Dep't State Aug. 26, 2013) (interim final rule).

5 *See Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items That the President Determines No Longer Warrant Control Under the United States Munitions List*, 73 Fed. Reg. 40,892 (Dep't Commerce July 8, 2013) (final rule); *Amendment to the International Traffic in Arms Regulations: Continued Implementation of Export Control Reform*, 73 Fed. Reg. 40,992 (Dep't State July 8, 2013) (final rule).



Wythe Michael

Advertising and General Solicitation Now Permitted for Companies Conducting Private Securities Offerings

Historically, U.S. Securities and Exchange Commission (SEC) rules have prohibited companies seeking to raise capital in a private securities offering from conducting any sort of advertising or "general solicitation" to obtain investors. In April 2012, however, Congress attempted to make it easier for companies to find investors and raise capital by passing the JOBS Act.[1] The JOBS Act directed the SEC to remove the prohibition on general solicitation and general advertising for securities offerings relying on Rule 506 of Regulation D (a commonly used exemption). After a 15-month period, the SEC issued a final rule in July 2013 containing the changes to Regulation D2 The rule changes became effective on September 23, 2013.

What changed? Under new Rule 506(c), companies seeking capital can place advertisements, post announcements and publish information concerning the offering in various outlets (including newspapers, journals, magazines and web sites).[3] Companies may also "cold call" potential investors, email potential investors, utilize social media to attract investors and engage in other activity that previously would have constituted "general solicitation."

What are the new requirements for using Rule 506(c)? To utilize the relaxed general solicitation rules, new Rule 506(c) requires (among other things) that all investors must be "accredited investors"[4] and that companies must take "reasonable steps" to verify that the investors are accredited investors.

What types of "reasonable steps" must be undertaken? The SEC release states that the company must look at the facts and circumstances of each purchaser and each offering to determine the types of reasonable steps necessary to verify that investors are accredited. According to the release, companies should consider: (1) the type of accredited investor that the purchaser claims to be; (2) the amount and type of information that the issuer has about the purchaser; and (3) the nature of the offering, such as the manner in which the purchaser was solicited, and the terms of the offering.

For example, if a purchaser is an individual, was solicited via an advertisement or a cold call, and the minimum investment amount is $25,000, the company would likely be required to take greater steps to verify the investor's status. On the other hand, if the minimum investment amount is $1,000,000, the company could take fewer steps to verify the investor's status. Note that the company has the burden of proving that it took reasonable steps. Accordingly, the company should retain all documentation and verification that it received.

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Are there any safe harbor methods to verify accredited investors status? Although the SEC guidance above is extremely vague, Rule 506(c) contains four specific methods of verifying accredited investor status. These methods, if used, are deemed to satisfy the verification requirement contained in Rule 506(c). However, companies are not required to use the safe harbor methods and can use the general reasonableness standard. Below is a brief summary of the four safe harbor methods:

- **Income Verification.** To verify the income of an investor, a company can obtain copies of IRS forms from the past two years that report income, including Form W-2, Form 1099, Schedule K-1, and a filed copy of Form 1040. A representation from the investor regarding current income should also be obtained.
- **Net Worth Verification.** To verify the net worth of an investor, a company can obtain items such as bank statements, brokerage statements, tax assessments and appraisal reports dated within the last three months and obtain a representation from the investor concerning liabilities. Documentation of liabilities must also include a credit report from at least one of the major credit agencies.
- **Confirmation from Third Party.** Instead of the first two options above, a company may obtain a written confirmation of an investor's accredited investor status from a registered broker-dealer, an SEC registered investment advisor, a licensed attorney, a certified public accountant and, possibly, a third party certification service. The representation should indicate that the third party has, within the previous three months, taken reasonable steps to verify that the investor is accredited.
- **Prior Investor.** A company is deemed to have complied with the verification requirement if an investor who previously invested in a company's prior offering under Rule 506 invests in a subsequent offering and certifies that the investor continues to qualify as an accredited investor.

Although these safe harbors are helpful, it is unfortunate that the SEC required the use of a credit report with respect to verifying net worth. We believe that few investors will agree to provide a credit report. It is also burdensome to require re-certifications of net worth every three months. Finally, some investors will be reluctant to provide specific information regarding their income. Therefore, we believe that third party confirmation will likely become the most utilized of the safe harbor verification methods.

Are there any restrictions on the content of advertising or solicitation methods? Although the SEC has issued a proposed rule requiring legends in advertising materials, it is unclear whether this rule will be finalized and there is currently no specific guidance regarding advertising content or solicitation methods. Nevertheless, companies should use common sense in developing advertisements and in determining the methods of general solicitation.

Legends similar to the legends described in the SEC's proposed rule should be included in any written advertising or communications. Additionally, companies should not make statements that cannot be substantiated and should avoid statements regarding future performance. Misleading information contained in advertisements could subject a company to claims from investors and securities regulators for violation of anti-fraud rules. Finally, other laws may impose restrictions on certain types of solicitations. For example, there are restrictions on phone and email solicitations under various state and federal laws. Also, if the company will be utilizing broker-dealers, the Financial Industry Regulatory Authority (FINRA) imposes specific rules regarding advertising content.

Are there any other limitations? The SEC issued rules in July that prohibit certain felons and other "bad actors" (and companies where these individuals have a significant ownership interest or control rights) from participating in securities offerings under Rule 506.[5] This will require a significant amount of pre-offering due diligence on the part of companies and their counsel to ensure that principals of the company are not subject to such restrictions.

Finally, the SEC issued proposed rules with several other requirements.[6] Although these proposed rules contain additional burdensome requirements (including pre-submission of general solicitation materials to the SEC), the proposed rules have not been finalized and it is unclear whether the rules will be finalized in their current form. P

1 The "Jumpstart Our Business Startups Act" can be found at: www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf

2 The SEC's final rule can be found at: www.sec.gov/rules/final/2013/33-9415.pdf

3 Note that "old" Rule 506 (now Rule 506(b)) is still available to companies who do not need to utilize general solicitation or advertising. We believe that many companies will continue to use Rule 506(b) because it is less burdensome than Rule 506(c).

4 The definition of "accredited investor" can be found at 17 CFR §230.501.

5 Note that this restriction applies to both Rule 506(b) and Rule 506(c) offerings. The SEC's final rule regarding bad actors can be found at: www.sec.gov/rules/final/2013/33-9414.pdf

6 The SEC's proposed rule containing additional requirements can be found at: www.sec.gov/rules/proposed/2013/33-9416.pdf


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The Dominant and Servient Estates in Oil and Gas Operations: The Accommodation Doctrine and Its Limits

Oftentimes tension arises between landowners desiring to protect the surface of their properties and mineral owners wanting to drill wells or conduct other surface operations to produce minerals underlying those properties. This tension is magnified in jurisdictions like Texas, where the surface and the mineral estates can be, and often are, severed from each other and owned by different parties. Disputes about these divergent property interests will likely become more frequent as drilling continues to expand into new shale plays across the United States and in more urban areas.

A review of Texas law on this issue is instructive because, "[g]iven Texas' unrivaled leadership in shaping the nation's dynamic energy sector, '[o]ther states frequently look to Texas decisions when confronted with a new or unsettled issue of oil and gas law.'"[1] *Getty Oil Co. v. Jones*[2] is the seminal Texas case on the tension between the surface and mineral estates. In Getty, the Texas Supreme Court observed that "the oil and gas estate is the dominant estate in the sense that use of as much of the premises as is reasonably necessary to produce and remove the minerals is held to be impliedly authorized by the lease."[3] This rule generally makes sense because "a grant or reservation of minerals would be worthless if the grantee and reserver could not enter upon the land in order to explore for and extract the minerals granted or reserved."[4]

Although mineral owners possess the dominant estate, Texas law provides that they must conduct their operations with "due regard" for the surface owner's rights.[5] Based on this "due regard" concept, the *Getty* court articulated what is known as the "accommodation doctrine" in an effort to reconcile this tension between the two estates. The accommodation doctrine holds that "where there is an existing use by the surface owner which would otherwise be precluded or impaired, and where under the established practices in the industry there are alternatives available to the lessee whereby the minerals can be recovered, the rules of reasonable usage of the surface may require the adoption of an alternative by the lessee."[6] The surface owner seeking to invoke the accommodation doctrine has the burden of establishing that the lessee's surface use is not reasonably necessary, considering "usual, customary and reasonable practices in the industry under like circumstances of time, place and servient estate uses."[7] The unreasonableness of a mineral owner's surface use may be established by showing the availability of other non-interfering and reasonable means to produce the minerals that will permit the existing use of the surface to continue.[8]

The Texas Supreme Court recently revisited the accommodation doctrine in *Merriman v. XTO Energy, Inc.*[9] In *Merriman*, the landowner brought suit to enjoin XTO from drilling a well that he alleged failed to accommodate his existing cattle operation.[10] In affirming a summary judgment for XTO, the court of appeals found the landowner failed to prove that: (1) he did not have any reasonable alternative "agricultural" uses for the subject tract; and (2) relocating his cattle operation to other tracts held under short-term leases was not a reasonable

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alternative.[11] While the Texas Supreme Court upheld the summary judgment, it clarified the court appeals' opinion in two respects. First, it found that the "existing use" in question was the cattle operation and not a broader "agricultural use" as worded by the court of appeals.[12] Second, the court disregarded the other tracts under short-term leases to the landowner and focused on whether the landowner was precluded from conducting his cattle operations on the subject tract.[13] Ultimately, the court affirmed the summary judgment, holding that "[e]vidence that the mineral lessee's operations result in inconvenience and some unquantified amount of additional expense to the surface owner does not rise to the level of evidence that the surface owner has no reasonable alternative method to maintain the existing use."[14]

In sum, Texas law holds that the mineral estate is dominant and will not be infringed upon lightly. While the rights of the surface and mineral estates are to be balanced, the surface owner carries a heavy burden under the accommodation doctrine and is unlikely to force the mineral owner to yield to an existing use of the surface unless there are less intrusive, industry-recognized alternatives available to the mineral owner on the leased premises. Other states have weighed in on the accommodation doctrine. For example, North Dakota and Utah have adopted the doctrine as set forth in *Getty*.[15] In Colorado, the doctrine is codified and provides that "[a]n operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land."[16] "Minimizing intrusion upon and damage to the surface" is defined to mean "selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator."[17] It is unknown how other jurisdictions will choose to "balance" these competing surface and mineral interests. However, more and more of them will likely be called upon to do so as drilling continues to intensify in other parts of the United States and especially near urban centers.

Practice Pointer:

Disputes about permissible surface uses and application of the accommodation doctrine can be minimized, if not avoided, by clearly establishing the mineral owner's surface rights in the governing lease or mineral conveyance. By way of example, practitioners representing both landowners and producers should consider including provisions specifying the types of permitted or prohibited surface uses by the mineral owner; identifying permissible locations for well sites, roads, pipelines or other facilities (either by legal description or by attaching a plat); and/or delineating any existing or anticipated surface uses the landowner will be allowed to engage in without interference by the mineral owner. P

1 *Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.2d 1, 42 (Tex. 2008) (Willett, J., concurring) (quoting Ernest E. Smith, Implications of a Fiduciary Standard of Conduct for the Holder of the Executive Right, 64 TEX. L. REV. 371, 375 n.13 (1985)).

2 470 S.W.2d 618 (Tex. 1971).

3 *Id.* at 622.

4 ***Harris v. Currie***, 176 S.W.2d 302, 305 (Tex. 1943).

5 *Getty*, 470 S.W.2d at 621.

6 *Id.* at 622.

7 *Id.* at 627.

8 *Getty*, 470 S.W.2d at 622; T*renolone v. Cook Exploration Co.*, 166 S.W.3d 495, 498 (Tex. App. – Texarkana 2005, no pet.).

9 407 S.W.3d 244 (Tex. 2013).

10 *Id.* at 247.

11 *Id.*

12 *Id.*

13 *Id.* at 250-51.

14 *Id.*

15 *Hunt Oil Co. v. Kerbaugh*, 283 N.W.2d 131, 136 (N.D. 1979); *Flying Diamond Corp. v. Rust*, 551 P.2d 509, 511 (Utah 1976).

16 C.R.S. § 34-60-127(1)(a).

17 C.R.S. § 34-60-127(1)(b).

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Economic Incentive Programs Fuel Growing Businesses

Customized state and local financial packages for qualifying companies can substantially offset startup, relocation and expansion costs. A comprehensive cost-benefit analysis will reveal just how much businesses can save and which states offer the most attractive economic development incentives.

Incentives are typically tied to wages, and job creation and retention goals. They include tax credits, tax exemptions, tax reductions, low-cost loans, cash grants and employee training reimbursements. Many communities offer their own breaks that businesses can couple with state programs to create a strong return on investment.

Generally, the more jobs a company creates and the longer it agrees to stay put, the more lucrative the offers. Some packages are designed for specific high-growth industries, while others aim to lure companies to economically distressed neighborhoods, often known as "enterprise zones." Operating costs may be lower in these areas because of lower taxes and reduced regulations.

Investing in Growth

The competition among states to recruit new companies or retain existing ones has never been more intense. States often try to outbid each other because they don't want to get left behind. The U.S. economy is still sputtering, and many governments continue to feel the pinch. Companies working to identify the ideal location and incentive package need to make sure that moving to or expanding in another state will improve profitability.

It's important to evaluate how a relocation or expansion will affect operating expenses – not just labor costs. Is it possible to finance the development without negatively affecting core activities? Will current cash flow support the investment? Sound financial planning is the foundation of a strong growth strategy.

When looking to move or expand, business-friendly states may be good places to start because they often have reduced taxes and favorable unemployment insurance rates. But companies must balance potential savings with the overall business environment. A careful analysis should address the following:

- Does the area have a qualified workforce?
- Does it have adequate infrastructure?
- Does it meet transportation needs?
- Does it offer a competitive advantage?
- Does the area reflect the customer base?

One state might have excellent infrastructure and a favorable tax rate, but if the business has to sink significant money into finding and training employees from scratch, it might be better to look elsewhere. The right community can help even a struggling organization turn a negative situation into a positive outcome.

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Don't Pop the Cork Yet

State departments of commerce or industrial development usually craft incentive packages. After identifying potential communities and conducting a comprehensive cost-benefit analysis, contact these offices to find out what incentives they may offer. An organization's home state may be the first place to try, especially if an organization is thinking about leaving for a bordering state. Neighboring states often compete aggressively to retain jobs, income taxes and investment dollars.

Businesses can increase their competitive advantage by pitting one state against another. Some companies even tap multiple states for incentives simultaneously. Don't overdo it, however. While some give and take is expected, no state or community wants to be pressured into unfair inducements.

One caveat: Just because a state or community makes an offer doesn't mean it's legitimate. The landscape is littered with what's commonly known as a "happy letter" – one that says officials are happy to provide various incentives with no guarantee that they'll follow through on them. It's important for potential partners to be realistic with one another and be held accountable for promises made.

Also beware of overly optimistic financial projections. Many incentives are paid out over a period of years and have stringent application and eligibility requirements. When the time comes for businesses to claim the incentives they negotiated, they may find the process more difficult than they had anticipated. A growing number of states and communities have begun exploring how best to provide incentives responsibly so no one loses in the end.

Finally, an organization that is mulling a move or expansion needs to be discreet. Economic incentives often attract the ire of critics who maintain they waste scarce public dollars and spur unfair competition by helping some companies and industries but not others. Keeping plans out of the public eye as long as possible to avoid losing bargaining power is critical. It can often take six to nine months to negotiate an optimal package. When owners make their final decisions, they can announce them to shareholders, employees and the media.

Rely on the Experts

Negotiating incentive offers and weighing the options, as well as the associated tax implications, requires a great deal of time and effort. One state may offer cash-oriented incentives, including up-front funding for facility construction and equipment purchases, while another dangles corporate income tax credits and employee training reimbursements.

A business can get the most favorable offer in the least amount of time by working with an experienced adviser who has analyzed incentives for other companies, structured large and small packages, and worked for a state economic development organization. An adviser will also conduct a detailed cost-benefit analysis that will help owners make informed decisions.

Incentives have skyrocketed in recent years and show no signs of abating. Companies that consider these offers to fuel growth will gain an important competitive advantage.

What are development incentives?

Most states – and many communities – offer a combination of economic incentives to attract companies and jobs. Specifics and eligibility requirements vary widely. Here are the most common examples:

Incentives	Benefits
Tax credits	Eliminate or reduce state corporate income taxes
Tax exemptions	Waive property, sales or other taxes
Low-cost loans	Provide favorable financing terms
Cash grants	Provide upfront funds for offsetting expenses
Enterprise zones	Reduce taxes and sometimes regulations in economically distressed areas
Employee training credits	Reimburse employee training costs

Thomas Paschos

Best Strategies Defending Employment Retaliation Claims in New Jersey

New Jersey Law Against Discrimination

The Law Against Discrimination (LAD) has a specific subsection addressing employer retaliation against employees for engaging in "protected" activity.[1] The law identifies two categories of employee activity that are "protected:" (1) opposing practices or acts that are unlawful under the LAD, i.e., complaining about, or protesting against, discrimination in the workplace and (2) filing a complaint or testifying or assisting in any proceeding under this act. In addition, this section of the LAD provides that it is unlawful for an employer "to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act."[2] The anti-retaliation protections of the LAD also apply to retaliation that happens after an employee is fired.[3]

New Jersey law is well settled that in order to establish a *prima facie* case of retaliation under the LAD, an employee was required to show: (1) he/she was engaged in a protected activity known to the employer; (2) he/she was thereafter subjected to an adverse employment decision by the employer; and (3) there was a causal link between his protected activity and the subsequent adverse employment action.[4] The plaintiff must prove that a retaliatory reason more likely than not motivated the defendant's action or that the defendant's stated reason for its action is not the real reason for its action. To prevail, the plaintiff is not required to prove that his/her protected activity was the only reason or motivation for the defendant's actions.[5]

The term retaliation can include, but is not limited to, being discharged, demoted, not hired, not promoted or disciplined. In addition, many separate but relatively minor instances of behavior directed against the plaintiff may combine to make up a pattern of retaliatory behavior.[6] A retaliation plaintiff must demonstrate that his underlying complaint of discrimination was brought "reasonably and in good faith."[7]

Conscientious Employee Protection Act

Under the Conscientious Employee Protection Act (CEPA), commonly known as New Jersey's "whistleblower statute," an employee may not be discharged or discriminated against in retaliation for the following activities:[8]

- Disclosing, or threatening to disclose, an activity, policy or practice of the employer (or another employer) that the employee reasonably believes is illegal, fraudulent or criminal. The disclosure may be made to either a supervisor or a public body.
- Providing information or testimony to a public body conducting an investigation, hearing or inquiry into an employer's violation of law.
- Objecting to or refusing to participate in an activity, policy or practice that the employee reasonably believes is illegal, fraudulent, criminal or incompatible with a clear mandate of public policy.

A plaintiff who brings a cause of action pursuant to CEPA must demonstrate that: (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule or regulation promulgated pursuant to law, or a clear mandate of public policy; (2) he or she performed a "whistle-blowing" activity; (3) an adverse

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employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.[9] In cases involving licensed or certified health care employees, plaintiff must show that it is more likely than not that he/she reasonably believed that the alleged wrongful activity, policy or practice about which the plaintiff "blew the whistle" constituted improper quality of patient care."[10]

CEPA only requires an employee's "reasonable belief" that the employer was violating the law.[11] The employee's suspicion that the employer is violating the law does not need to turn out to be true.

Legal Standard

Some recent cases have clarified the requisite standard for retaliation claims brought under Title VII, CEPA and the LAD. In *University of Texas Southwestern Medical Center v. Nassar*,[12] the United States Supreme Court was asked to define the proper standard of causation for Title VII retaliation claims. The Court noted that Title VII provided for two types of employment claims. The first is what the Court terms "status-based discrimination," which includes prohibitions against employer discrimination on the basis of race, color, religion, sex or national origin in the workplace. The second is employer retaliation on account of an employee having opposed, complained of, or sought remedies for, unlawful workplace discrimination. For discrimination claims, claimants only need to show that the motive to discriminate was one of the employer's motives, even if the employer also had other, lawful motives that were causative in the employer's decision. However, since Title VII's anti-retaliation provision appears in a different section of the statute, courts were unclear whether the legal standard for discrimination cases applied in retaliation cases.

In resolving this question, the majority of the Supreme Court held that Title VII retaliation claims must be proved according to traditional principles of but-for causation. The Court rejected the lower standard of proof which required employees only to prove that the employer had a mixed motive, making it more difficult for employees to prove retaliation claims.

On July 17, 2013, shortly after the Supreme Court decision in *Nassar*, the New Jersey Supreme Court addressed retaliation and came down on the opposite side under the LAD and CEPA. The case, *Battaglia v. United Parcel Service, Inc.*,[13] arose from an employee's claims that he was retaliated against for complaining to a supervisor about co-worker and supervisor misconduct and for making an anonymous complaint to the corporate HR Manager. The plaintiff-employee alleged, among other things, a retaliation claim under the LAD and under CEPA.

The Court ruled that a cause of action alleging retaliation under the LAD only requires the complaining employee's good faith belief that the unlawful conduct occurred, not an actual violation. An identifiable victim of actual discrimination is not required.

The Court also briefly discussed CEPA's waiver provisions, urging trial courts to be careful to prevent plaintiffs from bringing parallel claims under two or more statutes. Under CEPA's waiver provision, a plaintiff cannot maintain claims under both CEPA and another statute where the protected activity is the same.

Prevention of Retaliation Claims

To reduce the likelihood that an employee will have grounds to assert a retaliation claim, employers should create a working environment in which employees feel they can alert management to potential problems and participate in investigations without fear of retaliation. There are many steps employers should take to reduce the risk of retaliation claims and make claims easier to defend:

- **Establish a policy against retaliation.** Employers should have a strong policy against retaliation making it clear that retaliation will not be tolerated. The policy should encourage employees to come forward with complaints of unlawful conduct without fear of retaliation.
- **Provide employee training.** Employers should provide training on what types of conduct constitute retaliation and how to respond when a complaint is brought to their attention.
- **Communicate with the complaining employee.** Employers should refer the employee to anti-retaliation policies and explain to the employee that any hostile or negative treatment should be reported.
- **Keep complaints confidential.** The fewer people who know about a complaint, the smaller the chances are that someone will retaliate against the employee.
- **Consider taking protective measures.** Employers should consider allowing the claimant to report to a different supervisor or provide an alternative work schedule so as to reduce the risk of retaliation. Employers should be careful to ensure that any changes do not appear to be retaliatory.
- **Document everything.** Document the steps you take to prevent retaliation and to address it when you receive a complaint. P

1 *N.J.S.A.* 10:5-12(d),

2 *Id.*

3 See *Roa v. Roa*, 200 N.J. 555 (2010).

4 *Craig v. Suburban Cablevision, Inc.*, 140 N.J. 623, 629-30 (1995); *Romano v. Brown & Williamson Tobacco Corp.*, 284 N.J.Super. 543, 548-49 (App.Div. 1995).

5 *Kolb v. Burns, 320 N.J. Super.* 467, 479 (App. Div. 1999) (holding burden on plaintiff is to show "retaliatory discrimination was more likely than not a determinative factor in the decision").

6 *See Nardello v. Twp. of Voorhees*, 377 *N.J. Super.* 428, 433-436 (App. Div. 2005); *Green v. Jersey City Bd. of Educ.*, 177 N.J. 434, 448 (2003).

7 *Carmona v. Resorts Int'l Hotel & Casino*, 189 N.J. 354, 372-73 (2007).

8 N.J.S.A. 34:19-3.

9 *Dzwonar v. McDevitt*, 177 N.J. 451 (2003)

10 N.J.S.A. 34:19-3.

11 *Dzwonar*, 177 N.J. at 462-64 (holding that CEPA "does not require a plaintiff to show that a law, rule, regulation or clear mandate of public policy actually would be violated if all the facts he or she alleges are true [; i]nstead, a plaintiff must set forth facts that would support an objectively reasonable belief that a violation has occurred … [and] the jury then must determine whether the plaintiff actually held such a belief and, if so, whether that belief was objectively reasonable").

12 133 S. Ct. 2517 (2013)

13 2013 N.J. LEXIS 734 (N.J. July 17, 2013)

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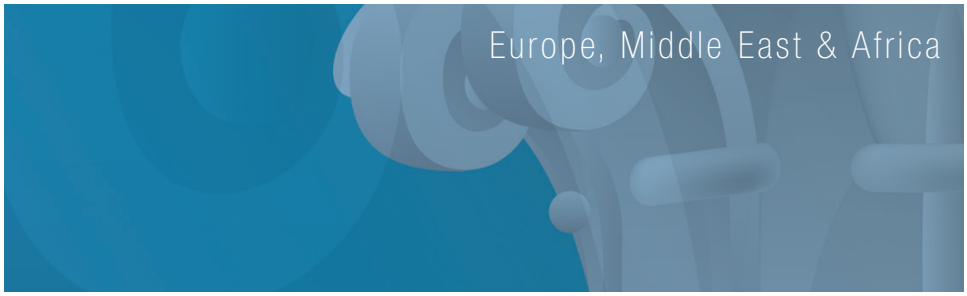

After PRISM – Switzerland as Preferred Location for Data Centers and Cloud Services

Switzerland is a top location for data centers and cloud services: In Switzerland, privacy and data protection have a longstanding tradition and are respected both by law and in practice. Judicial aid is granted restrictively. Data stored by a Swiss company in Switzerland is therefore well protected.

From a privacy point of view, U.S. providers (in the U.S. or U.S. affiliates based in Switzerland) have a disadvantage as extraterritorial U.S. law can be applicable.

Switzerland as an Attractive Location for Data Centers

Despite its small size, Switzerland is a leading host country for data centers.[1]

Why?

1. **Economic reasons:** Switzerland provides economic, political, and social stability and has one of the lowest inflation rates worldwide. A highly competitive business and tax environment[2], flexible employment laws, a skilled international workforce and high quality of life are further advantages.
2. **Geographic reasons:** Switzerland being in the heart of Europe guarantees a low latency period and excellent data and travel connections to all key European cities. Furthermore, natural catastrophes – such as earthquakes, tornadoes and hurricanes – are extremely rare.
3. **Infrastructure reasons:** The Swiss ICT-Infrastructure is highly developed and enables the processing of high data volume.[3]
4. **Energy reasons:** Energy costs are reasonable[4] and the availability of power supply is very high. Another point is sustainability; Switzerland scores well with its renewable energies, such as hydroelectric power.

Legal Reasons

Switzerland has a longstanding privacy tradition. In the Federal Constitution, data protection is recognized as an independent citizens' right.[5] The Federal Act on Data Protection aims to protect the fundamental rights of natural persons and legal entities whose data is being processed.[6]

The "gold standard" for privacy and security has been the EU Data Protection Directive. While not a member of the EU, Switzerland is a member of a very small club of non-EU countries declared to be compliant with the EU's requirements for international data processing. This opens up opportunities for Swiss businesses to do cloud computing for other countries, inside and outside the U.S.

The Swiss data protection level is even higher than in EU countries. Contrary to EU-legislation, Swiss law protects not only personal data, but also data on legal entities. This is an additional advantage.[7]

And contrary to the U.S. and other European countries (England, France, Germany), as far as known in the public, Swiss authorities have not implemented surveillance like activities such as PRISM. The access of (Swiss) authorities to private data is very restricted – by law and in fact.

PRISM, U.S. Patriot Act and Swiss Data Protection

As a reaction to Edward Snowden's publications, data center customers are increasingly concerned about their privacy. U.S. and non-U.S. providers of data and cloud services are faced with many questions.

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How is the situation in Switzerland? Does the U.S. Patriot Act apply in Switzerland?

The title of the Patriot Act is actually a ten-letter acronym (USA PATRIOT) that stands for Uniting (and) Strengthening America (by) Providing Appropriate Tools Required (to) Intercept (and) Obstruct Terrorism Act of 2001. The act allows federal officers, who acquire information through electronic surveillance or physical searches, to consult with federal law enforcement officers, to coordinate efforts to investigate or to protect against potential or actual attacks, sabotage or international terrorism or clandestine intelligence activities by an intelligence service or network of a foreign country.[8] In the U.S., investigators may easily apply for an order requiring sensitive data. An FBI officer may have direct access to the data if he sends a National Security Letter ("NSL") to the concerned person or legal entity. U.S. investigators may obtain a so-called "gag order," which prevents providers from informing any concerned person that his/her information is required by U.S. investigators.

In Switzerland, no Patriot Act or PRISM program[9], or the like is in force. The access of (Swiss) authorities to private data is very limited both by law and in fact. In general, any unauthorized obtaining of data or accessing to a data processing system is a violation of the Swiss Criminal Code.[10] Furthermore, any activities on behalf of a foreign state on Swiss territory are illegal[11] such as gathering evidence in Switzerland without a prior request for judicial aid.

The Patriot Act may not be applied on Swiss territory. Thus, neither foreign authorities nor civil parties have any direct access to personal or business data located on Swiss territory. In general, without a Swiss state order, no access is permitted.[12]

Restrictive Judicial Aid

Switzerland is a privacy fortress, but no fortress is unconquerable. Different ways of cooperation between Switzerland and foreign countries are permitted, such as in criminal matters there is police,[13] administrative cooperation and also mutual assistance.[14]

Foreign countries may apply for judicial aid to access data stored within Switzerland's borders.

Swiss authorities grant international mutual assistance only if a formal request is substantiated and specified. Foreign authorities must explain in detail who is concerned, what is the subject of the proceeding, and, in particular, why the requested information is sought and relevant to the foreign proceedings. The Swiss authorities are restrictive; no foreign fishing expeditions are accepted.

In practice, judicial aid is difficult for practical reasons. According to the vice-director of the Federal Office of Justice, Ms. Susanne Kuster, it is almost impossible to find out where exactly the data is stored within a data center without the cooperation of the concerned owner of the data. Therefore, in Switzerland, such taking of evidence is done only in rare cases.[15]

U.S. Affiliates in Switzerland

It must be noted that the Patriot Act applies also to U.S. affiliates settled in Switzerland.[16]

U.S. affiliates located in Switzerland might get into difficult situations because they must comply not only with the local Swiss law but also with (extraterritorial) U.S. law.

If a U.S. affiliate, based in Switzerland, receives a National Security Letter, it would be against Swiss law to follow a U.S. request without approval from the competent Swiss authority.

Trends After PRISM – Recommendation

We have received many questions from worried clients, in particular related to outsourcing and cloud services.

Basically, our advice is the following:

- Make sure that your data is stored in data centers physically located in Switzerland.
- Make sure that your data does not leave Switzerland.
- Check, whether your provider is a U.S. affiliate.
- Check your contracts with the data center provider.
- For critical data such as essential technical know-how of your company or health data, negotiate special clauses with your data center provider, such as information duties of the data center for any access to the servers, anonymization of servers, physical access to servers only by the customer, etc.
- Check encryption solutions.

Data center capacities in Switzerland are being massively increased. Outsourcing, email, and cloud services are successfully marketed with a Swiss approach. New techniques, called homomorphic cryptography, are evolving, and enable the processing to occur while the data remains encrypted.

1 Switzerland ranks in 10th place in the Data Centre Risk Index 2012; Hurleypalmerflatt/Cushman&Wakefield; Data Centre Risk Index 2012; Informing global investment decisions, p. 7.

2 Cf. Asut/economiesuisse; Datentresor: So bleibt die Schweiz ein Topstandort für Data Center, dossierpolitik, 19. November 2012, Nummer 22, p. 3 et seq.

3 Switzerland belongs to the leaders of ICT infrastructure (rank 3 worldwide in ITU top broadband economies; Broadband Commission, The State of Bradband 2012, September 2012, Annex 3).

4 The Swiss price per kWh ranked 4th after Russia, Iceland and Finland; Hurleypalmerflatt/Cushman&Wakefield; Data Centre Risk Index 2012; Informing global investment decisions, p. 7.

5 Art. 13 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (SR Nr. 101).

6 Federal Act on Data Protection [DPA] of 19 June 1992 (SR Nr. 235.1).

7 Cf. Asut/economiesuisse; Datentresor: So bleibt die Schweiz ein Topstandort für Data Center, dossierpolitik, 19. November 2012, Nummer 22, p. 3 et seq.

8 Cf. Section 215 of the USA Patriot Act.

9 So far, there is no PRISM or similar program known in Switzerland.

10 Art. 143 et seq. of the Swiss Criminal Code of 21 December 1937 (SR Nr. 311.0).

11 Art. 271 of the Swiss Criminal Code.

12 See section III of this article for more details on Swiss Mutual Assistance.

13 Art. 75a of the Federal Act of International Mutual Assistance in Criminal Matters (IMAC); Police cooperation covers measures that can be undertaken without the use of compulsory procedures. The communications between police authorities generally happens via their national Interpol bureaus. Especially the Schengen Agreement has affected the rules for police cooperation within the EU; Guidelines of the Federal Office of Justice, International Mutual Assistance in Criminal Matters, 9th edition 2009, p. 6.

14 The distinction between police cooperation and mutual assistance varies from international conventions and countries concerned, Guidelines of the Federal Office of Justice, International Mutual Assistance in Criminal Matters, 9th edition 2009, p. 6.

15 NZZ, Datengeheimnis wird zum neuen Schweizer Standortvorteil, 14th June 2013.

16 Such as it is the case with stored data by Microsoft, Google or Amazon.

Keith Kessel

Legal and Deal Considerations of U.S. Private Investment Funds and Investment Management

The economic, regulatory and political landscape relative to private equity continues to evolve. Regulatory focus, investor skepticism and public scrutiny are arguably at historic highs. The media has highlighted several of the abuses, fueling the negative sentiment for the private equity business model. As a consequence, the risks to private equity firms have never been higher. Therefore, it is incumbent upon firms operating in this business to dedicate the time and resources to effectively assess deals, critically evaluate all facets of the deals and vigilantly supervise sales and post-sale customer service. Moreover, firms must be able demonstrate that they have earnestly discharged their due diligence, supervisory and, where applicable, fiduciary responsibilities. Compliance personnel can enhance their value to a firm by effectively shepherding this process.

How to Establish a Private Equity Program

1. Private Funds

- Form/appoint investment adviser
- SEC versus state registration thresholds and definitions
- Self-distribution (SEC Rule 3a4-1); Use brokers/dealers to distribute or investment advisers to "no-load distribute"
- Blend special purpose vehicles (SPVs) and their formation documents with private equity/fund regulations
- Private equity/private fund offering documentation and compliance controls
- Compliance manual

2. Investment Advisers ("IAs")

- Develop/revise ADV form for private equity product/service line
- Update investment advisory contract(s) for investors and funds and valuation service providers, custodians, et. al.
- Distinguish IA role - who do you advise (advise investor clients re: Private Equity products vs. advise issuer/fund)
- If IA is limited to Private Equity/ Private Funds, evaluate registration obligations
- File Form PF for qualifying funds
- Evaluate state registration for private funds not required by Form PF & SEC registration
- New products review committee
- Compliance manual

3. Broker/Dealers ("BDs")

- FINRA Rule 1017 approval / Membership Agreement
- Revise compliance procedures per FINRA WSP checklist, etc.
- New products review committee
- Due diligence committee – FINRA guidance on due diligence
- Develop escrow agreement per SEC Rule 15c2-4
- Develop placement agent selling agreement

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- Filings protocol:
  - Form U-2, Form D (SEC & State Notice Filings) and filing fees.
  - FINRA private equity filings – Rule5123
- Compliance Manual

Private Equity and Private Funds – Regulatory Considerations

Private Equity

Private equity involves the non-public issuer's securities and/or an issuer's (public or private) non-public securities. The non-public nature of the securities depends upon the respective registration exemptions. Exemptions apply at the issuer level for project finance purposes and at the fund level for private funds. Common registration exemptions for project finance include §4(2) of the Securities Act of 1933, as amended, and Regulation D promulgated thereunder. Within Regulation D, the most common exemption is Rule 506. A quick summary of some of the private equity exemptions appears below:

Focus on Regulatory Exemptions to Maintain Unregistered Status – Partial List

Private Equity Exemptions
Regulation D
Most Common Retail Private Equity Exemption – Rule 506:

- Raise unlimited amount of money
- "Unlimited" Accredited Investors and up to 35 unaccredited investors
- No general solicitation
- Preempts state substantive law

See §12(g)(1) of the Securities Act and the JOBS Act for maximum number of investors

Other Considerations:

- Accredited Investor definition
- Accredited Investor entities not formed to purpose of investing in offering
- Purchases cannot be underwriters (reasonable care standard – 502(d))
- Transfer restrictions and restrictive legends
- Form D – federal filing
- Blue Sky Form D and ancillary notifications/fees
- Audits for financials if sold to non-Accredited Investors
- Heightened scrutiny for accredited status – tie to subscription agreement
- No general solicitation, except pursuant to the Jobs Act
- Preexisting relationships – common practice to demonstrate absence of general solicitation
- Integrated offerings: *six-month gap to avoid presumption of integration*

Other factors For Offering Integration:

- Whether the sales are part of a single plan of financing;
- Whether the sales involve issuance of the same class of securities;
- Whether the sales have been made at or about the same time;
- Whether the same type of consideration is being received; and
- Whether the sales are made for the same general purpose.

Rule 144A: Institutional Offerings – QIBs – $100 million (discretionary/ nonaffiliated) and Entity Type
Regulation S
Overseas Offerings

- Best sold to QIBs
- Be aware of local marketing regulations overseas, particularly to retail clients

Bicameral Offerings – Separate Subscription Agreements Advisable

Private Funds

Traditionally, any unregistered collective investment initiative that pools fractional investment interests in reliance upon registration exemptions of the Investment Company Act of 1940, as amended, for the purposes of investing in the securities of another company (excludes direct investments/project finance). Two of the common exemptions are briefly referenced below. However, an extensive filing may be required on Form PF, depending upon the type of fund that exists.

Private Investment Company – Basic Exemption, Section 3(c)(1)

Aggregate 10% owners – count their owners

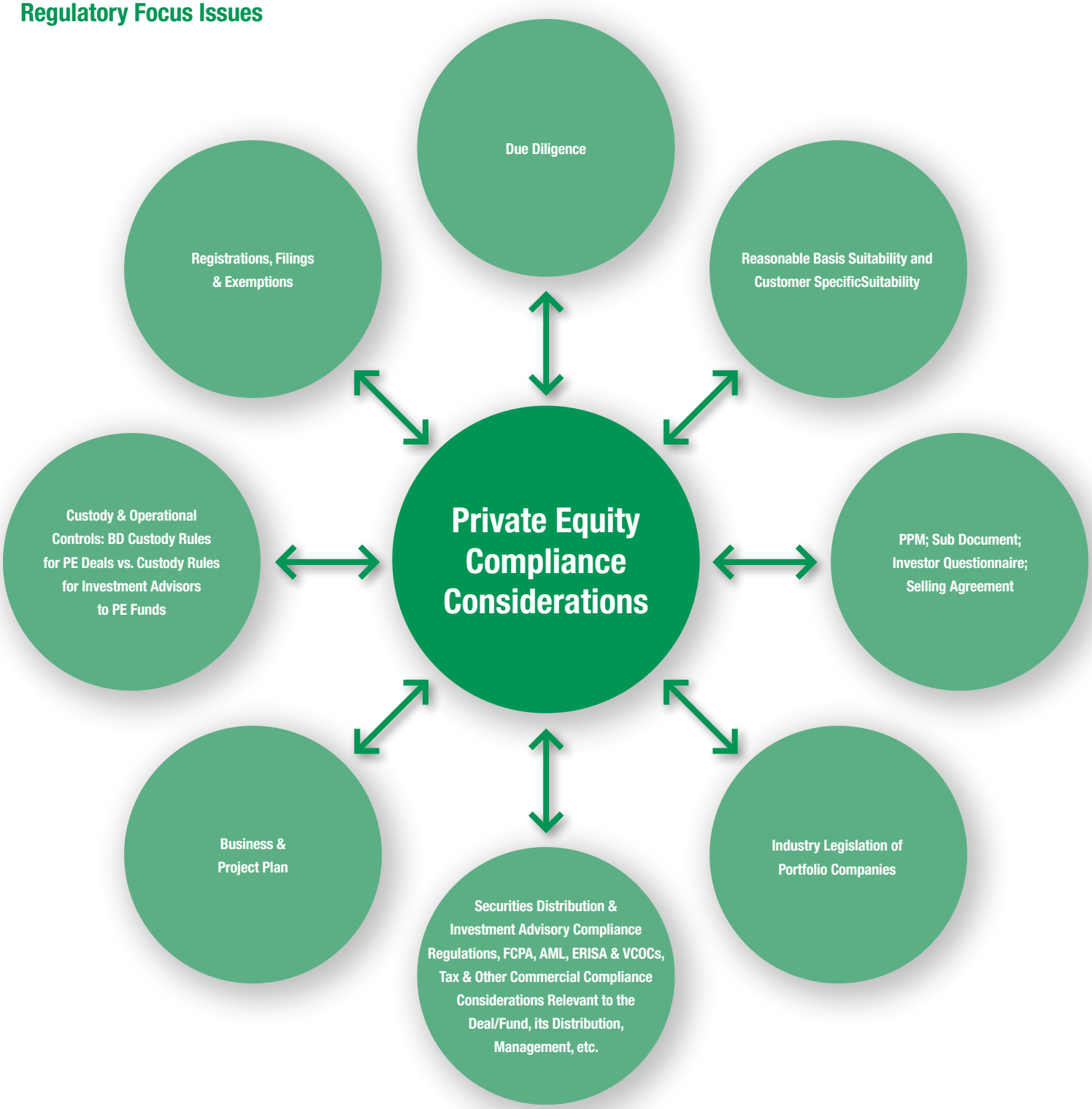
Knowledgeable employee generally exempt from 100 investor threshold

Institutional Private Investment Company
Section 3(c)(7) – Qualified Purchaser

i. Natural person who owns ≥ $5,000,000 in "investments"
ii. Gertain family companies & estates that own ≥ $5,000,000 in investments
iii. Owns/invests for other QPs (discretionary basis) ≥$25,000,000 in investments

Cannot mix 3(c)(1) & 3(c)(7) funds – must be separate offerings/feeders

Regulatory Focus Issues



Elements of Retail Investment Offering

- Private Placement Memorandum ("PPM")
- Investor Questionnaire
- Subscription Agreement
- Organizational Documents
- LLC Operating/Company Agreement
- LP Partnership Agreement
- Corporate By-Laws
- Placement Agent/BD Selling Agreement
- FINRA Rule 5123 Filing
- Escrow Agreement, if applicable
- Compliance Procedures
- Operational Control Procedures
- Investment Management Agreement (Funds)

Custody Compliance for Investment Advisers to Private Equity Issuers & Private Funds

Succinctly stated, there are a variety of compliance issues that may impact the IA depending upon whether it is considered to have custody of client assets or funds. Given the brevity of this article, I will not address those issues other than to say that the operation and controls of the IA have a material impact upon the compliance obligations associated with whether the IA must comply with the custody regulations or not. Generally, IAs seek to have a third party custodian that has economies of scale in its compliance with the custody regulations and takes the necessary steps, including, but not limited to surprise examinations, audits by a PCAOB accounting firm, internal control report, issuance of client statements on at least a quarterly basis, etc.

Due Diligence

Firms must be able to demonstrate that adequate due diligence has been performed. The selling BD, syndicate manager, IA and/or third parties such as laws firms, compliance specialty firms, etc. may perform the due diligence. Moreover, multiple firms may perform various aspects or segments of the due diligence exercise. Where firms are affiliated with the issuer, a combination of approaches must exist, including disclosing the affiliation, the potential conflict of interest and the potential effect of the conflict (*and any steps put into effect to mitigate the effect of the conflict*). The securities industry refers frequently to conflicts of interest between the managers, partners, issuers, IAs and BDs. Perhaps the first conflict of interest that firms should consider in private equity deals is with the issuer itself. In other words, the business plan itself is developed by the issuer and so IAs and BDs must strive to validate the business plan. Specific areas of due diligence should otherwise include the issuer and management, business prospects, issuer's assets, etc.

Documentation of Reasonable Investigation

Issuer Meetings:

- Meet with the issuer or other parties
- Recordation of the tasks performed
- Specify the records and other information reviewed (including dates of review)
- Specify the results of such reviews
- Specify individuals who attended the meetings and conducted the reviews

Common Reasons for Private Equity Failures

- Business plan and industry analysis
- Lack/weakness in financial controls
- Conflicts of interest
- Lack of critical thinking about the deal
- Allocation of opportunities and expenses
- Activities of issuer and related parties

Conclusion

The private equity world continues to evolve under the microscope and political scrutiny of regulators, investors and others. Private equity products serve as a catalyst and an essential component to the capital formation process, particularly for small and medium-sized enterprises. As an industry, we have unfortunately experienced and/or been privy to some of the "war stories" and abuses that have exacerbated the scrutiny that we now confront. As securities industry professionals, it is incumbent upon us to distinguish ourselves from the proverbial "bad guys" and thereby demonstrate that our firms care about "doing it right." Due diligence; compensation; formation, sales and management processes; deal features and many other aspects of private fund or private project financing ecosystem will play an important role in whether we can demonstrate we did it the right way and are worthy of retaining our livelihood in this important and valuable sector of the financial marketplace.

Szabolcs Hargittay

Zsolt Füsthy

Social Media and Hungarian Law

Social media has become an everyday factor in the lives of average people. Almost everybody has at least one account in various community pages (e.g.: Facebook, Twitter, LinkedIn, etc.). People are sharing photos, posting their opinions, making comments and "liking" each other's posts all the time. These activities may show a lot of information about the user's life, personality and workplace. Therefore, social media may affect the employment relationship in various ways.

We would like to highlight labor and data protection law in Hungary. Two main laws apply to this issue: Act I of 2012 on the Labor Code (referred to as "Labor Code") and Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (referred to as: "Information Act").

Labor Law Aspects

Legal disputes relating to social media usually revolve around the conflict between employees' right to express their opinions and the employer's legitimate economic interests.

According to the Labor Code, during the life of the employment relationship, employees shall not engage in any conduct which jeopardizes the legitimate economic interests of the employer, unless so authorized by the relevant legislation. Employees may not engage in any conduct during or outside their paid working hours that, stemming from the worker's job or position in the employer's hierarchy, directly and factually has the potential to damage the employer's reputation, legitimate economic interest or the intended purpose of the employment relationship.

Furthermore, the Labor Code sets a guideline pertaining to the confidentiality obligation of employees. According to the Labor Code, employees shall maintain confidentiality in relation to business secrets obtained in the course of their work. Moreover, employees shall not disclose to unauthorized persons any data learned in connection with their activities that, if revealed, would result in detrimental consequences for their employer or other people. The requirement of confidentiality shall not apply to any information that is declared by specific other legislation to be treated as information of public interest or public information and as such is rendered subject to disclosure requirement.

An employee may be requested to make a statement or to disclose certain information only if it does not violate his personal rights, and if deemed necessary for the conclusion, fulfillment or termination of the employment relationship. An employee may be requested to take an aptitude test if one is prescribed by employment regulations, or if deemed necessary with a view to exercising rights and discharging obligations in accordance with employment regulations.

The Labor Code contains a provision which is related to the data protection law, as well. Employers shall inform their

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employees concerning the processing of their personal data. Employers shall be permitted to disclose facts, data and opinions concerning an employee to third persons only in the cases specified by law or upon the employees' consent.

In addition, the Labor Code sets forth that the employers shall be allowed to monitor the behavior of employees only to the extent pertaining to the employment relationship. The employers' actions of control, and the means and methods used, may not be at the expense of human dignity. The private life of employees may not be violated.

Data Protection Law Aspects

When we examine the data protection law, first of all we must understand the key definitions:

According to the Information Act *personal data* shall mean any information relating to the data subject, in particular by reference to his name, an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity, and any reference drawn from such information pertaining to the data subject. *Special data* shall mean: personal data revealing racial origin or nationality, political opinions and any affiliation with political parties, religious or philosophical beliefs or trade-union membership, and personal data concerning sex life, or personal data concerning health, pathological addictions, or criminal record.

According to the Information Act, personal data may be processed only for specified and explicit purposes, where it is necessary for the implementation of certain rights or obligations. The purpose of processing must be satisfied in all stages of data processing operations; recording of personal data shall be done under the principle of lawfulness and fairness. The personal data processed must be essential for the purpose for which it was recorded, and it must be suitable to achieve that purpose. Personal data may be processed to the extent and for the duration necessary to achieve its purpose.

Personal data may be processed under the following circumstances: when the data subject has given his consent, or when processing is necessary as decreed by law or by a local authority based on authorization conferred by law concerning specific data defined therein for the performance of a task carried out in the public interest. Special data may be processed when the data subject has given his consent in writing.

The Practice in Hungary and Further Interesting Questions

There is no established judicial practice in Hungary on social media. Many questions have been raised that should be answered by the Hungarian courts in the near future.

(i) It should be clarified how the term "expression of the employees' opinion" could be interpreted. It is a real question if the employee's "liking" something on social media can mean an expression of an opinion, or just if the employee gives an explicit textual statement.

(ii) In the case of a job interview, if the employer checks the candidate's profile at a social page and refuses the application of the candidate because of certain personal information on the candidate's profile, then the candidate may turn to the Equal Treatment Authority or the competent Hungarian court. In this case the discrimination has to be proved by the candidate.

(iii) Information, data and pictures from Facebook are frequently used as evidence before the Hungarian courts. According to the Hungarian law, the court shall ascertain the relevant facts of a case upon weighing the arguments of the parties against the evidence. The court shall evaluate the evidence as a whole, and shall rule relying on its conviction. For example, in a lawsuit instituted against the employer for compensation because of long-term deterioration of health due to work accident, the employer proved the lack of deterioration of health with downloaded photos from Facebook. The enclosed photos showed that the employee had pursued sport activities after the accident.

(iv) As a curiosity, the National Council of Justice (hereinafter referred to as "Council") announced a recommendation in 2011 for judicial workers (included judges) about how to avoid the risks associated with the using of online social networks. According to the recommendation, the social media may ensure the chance for criminal groups to legally acquire endangering information about judges and courts. Therefore, the Council recommends to judicial workers to avoid using these social networks sites.

The old saying, "The world have changed at a much faster rate than the law has," is true. Bearing in mind that the new Hungarian Labor Code came into effect on July 1, 2012, no established legal practice exists in this respect.

Therefore, social media policies have a very important role in the workplace. It is strongly recommended that every employer adopt a social media policy. These policies may contain the terms and conditions of using social networks and media at the workplace or even after working hours. These policies have to be followed by the employees, otherwise disciplinary measures may be applied by the employers.

Filippos Ziras

Corporate Governance in Greece and Related Parties Transactions

Companies by definition are collections of individual entities (physical or legal) that are organized into groups and share a common goal, usually to amass as much capital as possible for the benefit of the entity itself and the people or organizations they are comprised of. A business deal between any of the aforementioned entities and the company itself is called a "Related Parties Transaction." Often criticized as a gaping wound on the body of modern globalized capitalism, KPMG consulting firm sees them as "an integral part of day-to-day business for many entities."

Corporate governance (CG) was first introduced in the Greek legal framework with the 3016/2002 law which was a result of all the research done on corporate governance in our country up to that date. The fact that it consists of only five pages is indicative of the sketchy work done by the government. A more serious attempt to codify the behavioral system of listed companies in Greece has been done by the Hellenic Federation of Companies (HFC) in 2011. The problem in this case is that HFC could only recommend exemplary behavior and could never sanction the disobedience of a listed company to its indicative rules. In 2011 HFC proceeded with the publication of a new reformed code that promoted best practices and is based on the Organization for Economic Cooperation and Development (OECD) regulations on CG and on the directive 2006/46/EC. This text is much closer to international standards and indicates the need for Greece to modernize its CG system. Apart from these texts, Greece also complies to the IAS-24 regulation which has become internal mandatory law.

A good way to evaluate the financial way of thinking for a certain population is to observe how minor shareholders prefer to play the game. Greek minor shareholders are risk averse. They prefer to invest in major low risk companies with shares of low market value. Is it because they have no trust in smaller companies that have no formulated regulations about its governance and in which they have no managerial say or is it because they prefer shares that have almost no default risk? I believe it's the latter.

The positive news coming from recent studies indicates that Greece is starting to abandon the classical concentrated model and is converging towards the Anglo-Saxon model. This may be a result of the severe economic crisis that has tortured Greece for the last six years and the series of privatizations of public companies, but it still is a step forward. The domestic implementation of a large number of European Union directives, regulations and communications; the rise of diversified capital needs of Greek corporations within the new international environment of intensified financial competition; and the gradual transformation of domestic corporate culture brought significant change in corporate relations and behavior.

In the past decade, the absence of relations between CG and corporate scandals stalled the debate about CG in Greece. The solution of auditing and legal measures seemed to be sufficient.

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In an article for the *Journal of Financial Regulation and Compliance*, Socratis Lazaridis raises the question of whether Greece can have an effective enforcement of Corporate Governance principles and structures. According to him, Greece is classified among the Continental European corporate governance pattern characterized by concentrated ownership, a dominant role for majority shareholders and a weak market for corporate control. The law 3016/2002 was an unsuccessful attempt to attract investments in Greece, and it has brought no results in improving the fundamental elements of the Greek corporate environment. Lazaridis is in favor of a flexible legal framework that will be easy to apply and therefore effective in terms of helping Greek corporate environment open up to the global competitive scene.

I personally agree with Lazaridis. I believe that in order to positively affect the performance of Greek companies, we must sufficiently enforce the current existing initiatives in the Greek legal framework.

For example, executive remuneration is not dependent on performance, power and control structure, monitoring of efficiency and incentive plans. Such inefficiency is moreover a domestic feature, since the law 3016/2002 failed to establish an independent monitoring mechanism or to enhance the efficiency of the existing ones.

As a contradiction, Charilaos Mertzanis in his article "The effectiveness of corporate governance policy in Greece" (2011) states that: "the rules and conventions that a country will have down the road will depend on the type of corporate structures and corporate rules that it began with." While the role and gravity of legal framework and regulation is important, equally important are differences in enforcement (law effectiveness) which take into consideration other economic and institutional factors. In other

words, despite the will and efforts of the government and its regulations, it is the market in its effort to regain balance that will regulate itself.

Greece has no distinct Corporate Governance Code. Law 3016/2002 is a fragmented regulation for the conduct and behavior of a board of directors and its members, executive or not, the auditing procedures and the general inner control of the company. Compared to foreign Codes of Corporate Governance, the Greek law lacks in depth analysis and sufficient coverage of practical guidance. The writer's opinion is that a new quasi-legal instrument which will have a legally binding force would not only be preferable but mandatory.

A fresh legislative view on the matter of related party transactions and financial reporting is the UK Enterprise and Regulatory Reform Act 2013 ("the 2013 Act") which amended Part 10 of the Companies Act 2006 ("the 2006 Act"). Executive remuneration and reporting is a hot potato that is crucial for most investors. The ideas of:

- top pay vs. long term performance,
- include all types of payments in one single figure for a director,
- the Directors Remuneration Policy,

and more, pave the way for similar legislative initiatives in other countries like Greece too.

Before concluding, it is worth mentioning that we expect the Ministry's reaction on a recent commendable amendment proposal from the Capital Market Commission for the law 3016/2002, which will concern Greek listed companies operating in Greece or in the EU. The general idea behind this amendment is the diversification in details for disclosed RPTs depending on their size compared to the value of the company.

The Greek corporate environment is in need of a new Reforming Act which will be a result of a joint effort between the Hellenic Capital Market Commission, the Government and the Hellenic Federation of Enterprises. We must avoid the random and scattered approaches which have been the norm up to today. What we need is a coherent all around approach of CG and RPTs in Greece. A new regulation that will cover all aspects of modern Corporate Governance and will not concern for example only the taxation like IAS-24 does, or the board of directors as law 3016/2002. Any solution cannot disregard social factors, governance models and a cost/benefit analysis.

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Amendment to Real Estate Specified Joint Enterprise Act

On June 21, 2013, the Law to Amend Part of the Real Estate Specified Joint Enterprise Act (the "Amendment") was enacted. Although the Bill of the Amendment was not passed in the 180th session of the Diet in February in 2012, the same Bill was submitted in the 183rd session of the Diet in 2013 and was passed. The Amendment will come into force within six months after promulgation.

Prior to the Amendment, the implementation of a real estate specified joint enterprise by a special purpose company (an "SPC") was considered almost impossible due to the very strict licensing standards, but this Amendment will make such implementation possible through the establishment of a new notification system. More specifically, the Amendment allows "Special Operations" in cases where notification is provided under the newly established notification system, and the Special Operations meet the requirements indicated below:

(i) An SPC, whose only purpose is to perform a real estate specified joint enterprise ("Real Estate Specified Joint Enterprise"), must be the operator of said enterprise.

(ii) Operations concerning a real estate transaction conducted pursuant to a Real Estate Specified Joint Enterprise contract must be entrusted to a real estate specified joint enterprise operator ("Real Estate Specified Joint Enterprise Operator"), who is licensed under the Act (an "Item 3 Enterprise Operator"), newly established by this Amendment. In general, such operator can be considered as essentially conducting the same business as an asset manager in a real estate business.

(iii) Operations concerning the soliciting for execution of a Real Estate Specified Joint Enterprise contract must be entrusted to a Real Estate Specified Joint Enterprise Operator, who is licensed under the Act as well as a Type II Financial Instruments Enterprise Operator under the Financial Instruments and Exchange Act (an "Item 4 Enterprise Operator," newly established by this Amendment).

(iv) Any counter party to the contract mentioned in (ii) above and/or any enterprise participant must be a special investor ("Special Investor") with specialized knowledge and experience related to real estate

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investment and fairly large capital amounts, such as a bank or trust company; and

(v) Compliance with other requirements necessary to achieve the protection of the project participants.

According to the press release of the Ministry of Land, Infrastructure and Transport, the Amendment aims to activate the local economy and provide relief against asset deflation, certain measures (such as permitting special purpose entities which meet certain requirements to carry out a bankruptcy remoteness type of Real Estate Specified Joint Enterprise), through the introduction and promotion of private funds into the earthquake resistance of buildings and/or the renovation of aging real estate. The press release also states that due to this Amendment, it is estimated that in 10 years after this amendment, new investments of about 5 trillion yen will be made, a ripple effect in terms of production of about 8 trillion yen will occur, and a job creation effect for about 440,000 people will also occur.

In addition to the requirements to the Special Operations, further requirements are described in the press release by the Ministry of Land, Infrastructure and Transport as set out below:

Real Estate Specified Joint Enterprise Operator entrusted with operations from Special Operators

(i) an operator who intends to operate an Item 3 Enterprise and an Item 4 Enterprise must obtain permission from the competent minister.

(ii) an Item 4 Enterprise Operator must be a Type II Financial Instruments Enterprise Operator under the Financial Instruments and Exchange Act.

(iii) For the Item 3 Enterprise Operators and Item 4 Enterprise Operators, in addition to the current regulations, there are new regulations such as prohibitions against self-dealing, subcontracting works which were already entrusted. In the event of a violation of these regulations, the competent minister may issue any instructions and/or disposal orders, a business suspension order and/or an order cancelling a permission that had been granted for an enterprise.

Ensuring the Proper Operation of the Enterprises of Real Estate Specified Joint Enterprise Operators

The following factors shall apply to Real Estate Specified Joint Enterprise Operators (including current Real Estate Specified Joint Enterprise Operators):

(i) Facts indicating that there are organized crime group members, etc. among the officers of an Operator, the enterprise activities of the Operator are controlled by organized crime group members etc., and other such facts would be considered reasons for the disqualification of a permission of such Operator

(ii) In order to enhance the supervision methods, the counterparties to Real Estate Specified Joint Enterprise contracts and subcontractors shall be added as subjects of orders for the collection of reports and site inspections, etc.

(iii) Penalties for violations of laws in relation to the delivery and inspection of documents to/by enterprise participants, soliciting contracts of a Real Estate Specified Joint Enterprise, and reports to administrative authority etc. are to be strengthened.

Please contact any of us at Hayabusa Asuka Law Offices for further details about the Amendment.

Preethi Sharma

Data Privacy and Protection of Sensitive Personal Data

As a global forerunner in the Information Technology (IT) industry, data privacy and protection laws have assumed more importance than ever before in India. The department of information technology, under the ministry of communication and information technology – the nodal ministry administering The Information Technology Act, 2000 ("IT Act") – has put in place The Information Technology (reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 ("Rules 2011"), pursuant to powers to make rules (S. 43A read with S. 87 of the IT Act). The Rules 2011 read with the departmental clarification dated August 24, 2011, govern the aspects relating to sensitive personal data or information (SPD).

Personal Information

Any information that relates to a natural person, which either directly or indirectly, in combination with other information available or likely to be available with a corporate body, is capable of identifying such person.

Sensitive Personal Data or Information

Personal information considered sensitive is that consisting of information relating to:

- password;
- financial information such as bank account or credit/debit card/other payment instrument details;
- physical, physiological and mental health condition;
- sexual orientation;
- medical records and history;
- biometric information;
- detail relating to above clauses as provided to body corporate for providing service; and
- information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise.

Exceptions: information freely available/accessible in public domain/furnished under Right to Information Act, 2005/other laws in force.

Applicability of the Rules 2011

The Rules 2011 are applicable to a corporate body (any company including a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities) or any person located within India (Entity).

As per the clarification dated August 24, 2011, the provisions of the Rules 2011 relating to collection and disclosure of SPD are not applicable to an Entity providing services relating to collection, storage, dealing or handling of SPD under contractual obligation with any legal entity located within or outside India. Entities providing services to the provider of information (being natural persons) under a contractual obligation directly with them however are bound by all provisions of Rules 2011.

Dos and Don'ts for Entities for Use and Protection of SPD

Dos:

1. Provide for a policy for privacy, disclosure and reasonable security practices and procedures for handling or dealing of the SPD.
2. The policy should be clear and easily accessible to providers of information.

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3. The policy is to be published on the Entity's website. The policy should provide for:

- type of SPD collected;
- purpose of collection and usage;
- disclosure policy;
- reasonable security practices and procedures policy; and
- name and address of designated grievance officer.

4. With regard to collection of SPD:

- obtain prior consent in writing by fax, email or any mode of electronic communication from providers of information;
- state purpose of usage;
- take steps to ensure that provider of information knows that information is being collected, purpose of collection, recipients of the data and the name and address of the agency collecting and retaining the information;
- use the information for purpose collected;
- permit providers of information to review their information and give an opportunity to amend or correct any deficiency or inaccuracy (Entity possessing SPD is not responsible for its authenticity);
- give an option before collecting data not to provide the information or withdraw consent already given and in the event that consent is not given or withdrawn opt not to provide goods or services;
- keep the information secure;
- address grievances and discrepancies with regard to processing of information in a time bound manner;
- designate a Grievances Officer who shall expeditiously or within one month of receipt of grievance (whichever is earlier), redress such grievance.

5. Take prior consent from the provider of information for disclosure of SPD unless such disclosure has been agreed to between them or where the disclosure is necessary for compliance of a legal obligation. [Exception: disclosure to government agencies mandated under law to for verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution and punishment of offences.]

6. Transfer SPD to any Entity in India or located in any other country, only if such country ensures the same level of data protection that is adhered to by the transferor as provided under the Rules 2011, and only if the transfer is necessary for the performance of a lawful contract between the transferee or any other person on its behalf and the provider of information or where such person has consented for data transfer.

7. Implement security practices and procedures designed to protect SPD from unauthorized access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between Entity and the provider of information or may be specified in any law for the time being in force [an Entity shall be considered to have complied with the above requirement if it has implemented its security practices and standards and has a comprehensive documented information security program and information security policies that contain managerial, technical, operational and physical security control measures, commensurate to the information protected].

Don'ts:

- SPD cannot be collected unless it is for lawful purpose connected with function or activity of your entity and unless the collection is considered necessary for that purpose.
- SPD cannot be retained for longer than required.
- SPD cannot be published.
- SPD cannot be disclosed further if you are a third party receiving SPD from an Entity.

Protection of SPD

S. 43A of the IT Act provides that an Entity which, possesses, deals with or handles any SPD in a computer resource which it owns, controls or operates, shall be liable to pay damages, not exceeding Rs. 5 crore (approx. USD 0.8 million) to the person adversely affected, for negligence in implementing and maintaining reasonable security practices and procedures thereby causing wrongful loss or wrongful gain to any person.

Penalty for fraudulent or dishonest use of electronic signature, password or other unique identification feature of any person (identity theft), is imprisonment for a maximum of three years and fine of Rs. 1 lakh. Contravention of any rules or regulations under the IT Act, for the contravention of which no penalty is separately provided, attracts penalty or compensation not exceeding Rs. 25,000/-.

Adjudication Procedure

In the event of offense giving rise to penalty, the central government is required to appoint an adjudicating officer to inquire into the purported offence and decide on the penalty and/or compensation. The proceedings are quasi-judicial in nature. There is an express bar on civil courts' original jurisdiction.

In adjudging quantum of compensation, the factors to be given due regard to are the amount of:

- gain of unfair advantage (wherever quantifiable) made as a result of the default;
- loss caused as a result of the default;
- repetitive nature of default.

Contravention can be compounded before or after institution of adjudication; by paying compounding fee limited to maximum penalty leviable for the contravention.

Jurisdictional Hierarchy

- Adjudicating officer appointed by central government
- Cyber Appellate Tribunal
- High Court
- Supreme Court

Conclusion

With the Rules 2011, India has put in place a legal framework for the protection of SPD. So far there has not been an occasion to test the effectiveness of these Rules 2011, and in addition a lot needs to be done for creating awareness amongst Entities that need to implement the provisions of these Rules 2011.

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Ileana M. Céspedes V.

Law that Increases the Number of Nationalities with Right to Request Residence in the Republic of Panama

During the last four years the Panamanian Government, seeking to offer foreign investors migratory stability, created immigration policies directed towards increasing foreign investment in Panama.

The existing immigration policies, up until 2012, prevented some companies from broadening their services because the hiring of expert foreign personnel in certain fields was limited by Article 17 of the Labor Code. According to the code, an employer cannot hire foreigners whose wages surpass 10 percent of the payroll of Panamanian employees, for as long as the employee does not acquire the status of permanent residence.

Therefore, taking into consideration the number of foreign nationals of certain countries that are subject to *"expatriation contracts"* by the headquarters of companies recently established in Panama, and the interest of many foreigners to establish new businesses in Panama, the Government decided to create the migratory subcategory called *"Permanent Resident in the capacity of foreign national of specific countries that maintain friendly, professional, economic and investment relationships with the Republic of Panama."* The category grants the foreigner the possibility of obtaining an indefinite work permit, without it being related to a specific company or the number of Panamanian workers hired versus foreigners.

Among the foreigners who may opt for this type of permanent resident (pursuant to the provisions of Article 2 of Executive Decree No. 416 of June 15, 2012, modified by Executive Decree No. 548 of May 14, 2013), are the nationals of: Great Britain and Northern Ireland, Germany, Argentina, Australia, Korea, Austria, Brazil, Belgium, Canada, Spain, United States of America, Slovak Republic, France, Finland, the Netherlands, Ireland, Japan, Norway, Czech Republic, Switzerland, Singapore, Uruguay, Chile, Sweden, Poland, Hungary, Greece, Portugal, Croatia, Estonia, Lithuania, Latvia, Cyprus, Malta, Serbia, Montenegro, Israel, Denmark, South Africa, New Zealand, Hong Kong, Luxembourg, Liechtenstein, Monaco, Andorra, Marino, Taiwan and Costa Rica.

To obtain said residence permit, the foreigner must submit his/her passport with a minimum of six months before its expiration, a second identification document whereby he/she evidences his/her nationality, police record from his/her country of origin or of residence (U.S. citizens must submit a certification issued by the FBI). In the case of dependents, it is necessary to submit a certification that evidences the relationship, to have a bank account at a local bank with a balance not under four figures, a document certifying a domicile in Panama and all documentation evidencing the purpose for requesting the permanent residence pursuant to the economic or professional activity to be carried out in Panama. P

Ileana M. Céspedes V. is an Associate at Quijano & Associates. She worked at the Justice Department and at the Judicial Branch, achieving an appointment as Assistant Judge of the Criminal Branch Circuit, before entering private practice 11 years ago.

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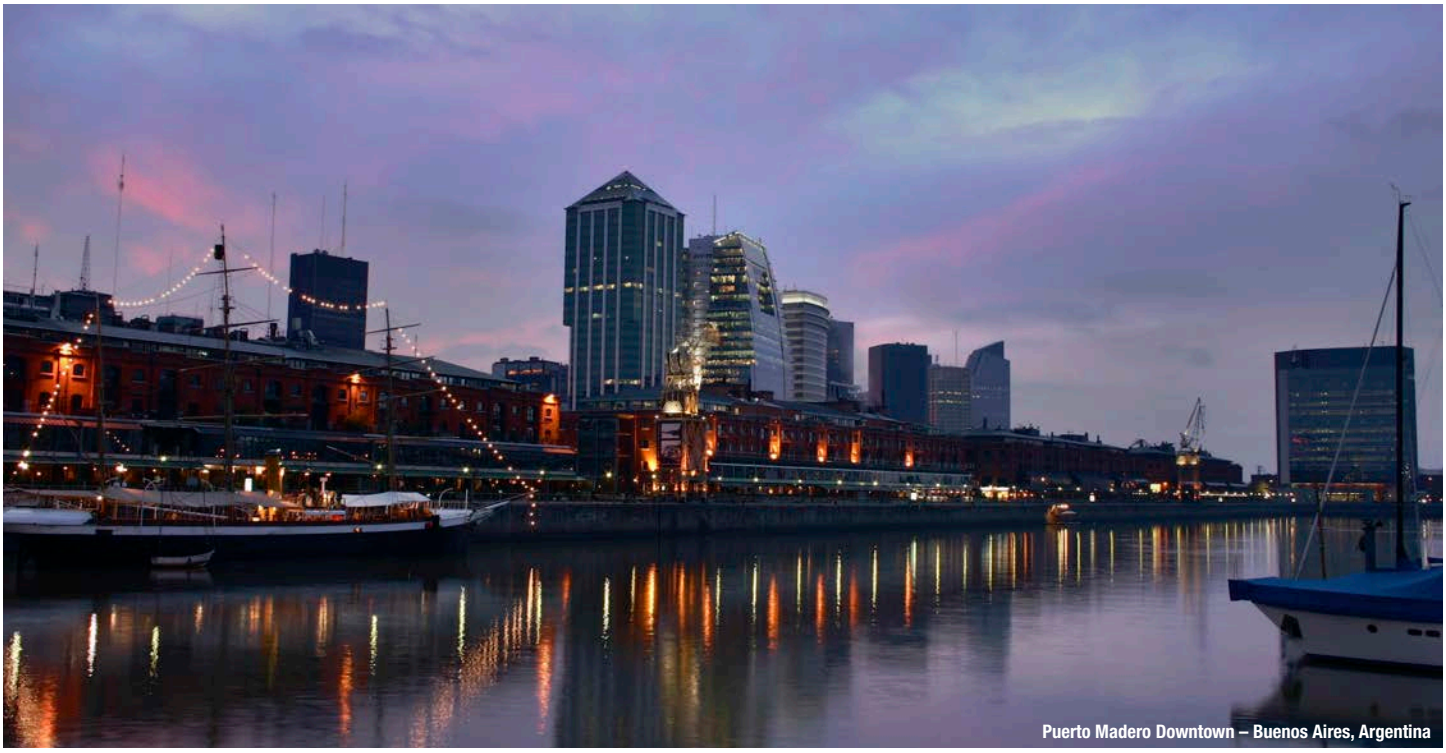

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2014 Member Locations – International Society of Primerus Law Firms

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Primerus Names 2013 Community Service Award Winner and Finalists

It's hard to quantify the number of people who have benefited from the hundreds of hours of legal services and personal time the attorneys at Kubasiak, Fylstra, Thorpe & Rotunno (KFT&R) have donated throughout the Chicago region.

The recipients include those who receive homes through DuPage Habitat for Humanity, at risk boys on Chicago's west side, law students from Loyola University of Chicago School of Law, food stamp recipients needing legal representation, families in Illinois who struggle to put food on the table, and many others.

Thanks to these efforts, KFT&R won the 2013 Primerus Community Service Award, as announced at the Primerus Global Conference in October. Primerus names finalists in addition to the winner. This year's finalists are Brayton Purcell of Novato, California; Mandelbaum Salsburg of West Orange, New Jersey; and The Masters Law Firm of Charleston, West Virginia.

Kubasiak, Fylstra, Thorpe & Rotunno

"KFT&R wants to thank all of our colleagues in Primerus for recognizing the efforts of our attorneys who serve the community in which we practice," said Steven J. Rotunno, Director and Shareholder of KFT&R. "This is a great honor given the fact that many Primerus firms provide significant assistance to those in need in their communities. KFT&R attorneys have historically believed that service to disadvantaged individuals is one of the responsibilities we shoulder when given the privilege to practice law."

Their community service efforts include:

- Gerald E. Kubasiak continues to serve as a judge on the Illinois Court of Claims. The Court of Claims hears cases in which the State of Illinois has waived sovereign immunity.
- In November 2012, the Supreme Court of Illinois appointed Daniel J. Kubasiak as a judge of the Circuit Court of Cook County.
- KFT&R provided legal representation on environmental, land use, real estate and employee benefits law to DuPage Habitat for Humanity, an affiliate of Habitat for Humanity International operating in the western suburbs of Chicago.
- Doug Hewitt organized, supervised and participated in a mentoring program for at risk boys at the Marillac Social Center on Chicago's west side for the last 15+ years. He has contributed more than 100 hours as a mentor.
- Steven Rotunno participates in mentoring programs with law students from Loyola University of Chicago School of Law. The programs include counseling students on career opportunities, classes that may be most beneficial to their practice area, practice areas that may be best suited for the students' professional goals, and potential job opportunities. His participation in these programs includes presentations to groups of students, participation in after-work social programs and one-on-one meetings at his office.
- Bernie Peter handles food stamp cases for the Legal Assistance Foundation of Chicago.
- KFT&R participated in the Lawyers Feeding Illinois program run by the Illinois State Bar Association from November 2012 to March 2013 through which 5 million meals were provided for needy families in Illinois.

Brayton Purcell

The community service efforts of finalist Brayton Purcell include not only giving time and resources to community organizations, but also running an active pro-bono program.

Among the organizations that have benefited from their efforts are the American Lung Association, the North Bay Children's Center, Marin Food Bank,

Special Olympics of Sonoma County, Mesothelioma Research Foundation of America and the Marin Humane Society. Brayton Purcell was also the presenting sponsor for the Marin Valentine's Ball which benefits three non-profit agencies that serve the children of Marin: Family Law Center, Marin Advocates for Children and North Bay Children Center.

Brayton Purcell is also a major supporter of Public Justice, a nationwide non-profit public interest law firm that handles pro-bono lawsuits to protect the environment, consumers and access to justice. In addition to significant financial support, Alan R. Brayton serves on the Board of Directors and Executive Committee and donates one to two days each month in support of their activities. He was awarded the 2013 Champion of Justice Award at the 31st Annual Gala and Awards Ceremony in July.

Mandelbaum Salsburg

Commitment to community service at Mandelbaum Salsburg starts at the top. Last October, Managing Partner Barry Mandelbaum was selected by Cerebral Palsy of North Jersey to be its 2012 honoree at its "Steps to Independence Celebration," a gala fundraising event. His fundraising efforts for that night resulted in more than $550,000 of donations, the highest ever in the organization's history. In his capacity as a trustee of the Steven and Beverly Rubenstein Foundation, Mandelbaum has also facilitated many significant donations, including a $450,000 grant to the Valerie Fund, which assists children with cancer and blood disorders, a $500,000 gift to St. Jude's Hospital to fund a parents' waiting and hospitality center next to the pediatric ICU and a $100,000 gift to a Morris County ARC association assisting challenged adults to live independently.

The firm's in-house community service efforts are guided by a charity committee comprised of attorneys and staff members. The firm's organized efforts include two main events. The first are regularly scheduled "Denim Days" when, for a small donation to a selected charity, firm employees can wear denim to work on a designated day. The second is collections of toys, food, coats and other necessities that benefit local organizations. Following Hurricane Sandy in October 2012, the firm arranged a number of emergency collection drives of food, household goods and other essentials that they then delivered to areas of New Jersey that were hard hit by the storm.

The Masters Law Firm

Employees of The Masters Law Firm are involved in community service efforts benefiting young and old including:

- Supporting breast cancer awareness both financially and by participating in the annual Susan G. Komen Foundation walk
- Actively participating in the West Virginia Association for Justice, many of whose programs provide assistance to consumers and others in West Virginia.
- Representing the West Virginia State Troopers Association pro bono for several years. Two of the firm's attorneys continue to prosecute a civil action on behalf of disabled state troopers in a remand from a successful appeal to the West Virginia Supreme Court, pro bono.
- Supporting local schools by providing needed supplies, volunteering to explain the judicial system, teaching youth proper firearm operation and safety, being active in Read-A-Loud programs, Cub Scouts, and coaching a youth soccer team.
- Visiting the elderly in nursing homes, talking with them and reading to them.

Please join Primerus in congratulating the Community Service Award Winner and Finalists. Thank you to them, and to all Primerus law firms, for your commitment to serving others. P

By Linda Hazelton, COO, Dunlap Codding

Creating Community: Dunlap Codding's Approach to Community Service

"Community doesn't need a place… but it doesn't hurt to have one." Beginning with this simple concept, Dunlap Codding is redefining what it means to be a law firm actively engaged in the Oklahoma City community.

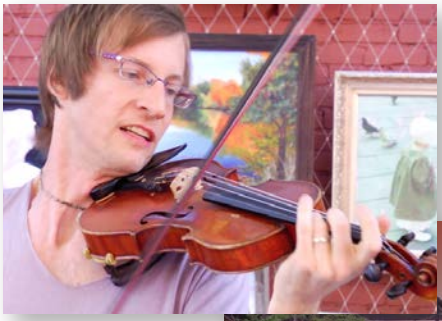
In February 2013, Dunlap Codding, Oklahoma's oldest and largest intellectual property boutique law firm, moved into its new offices at 609 W. Sheridan Avenue in the historic Film Row District of Oklahoma City. During the prior year the firm purchased a 1920s warehouse in the Film Row District – an area called "skid row" as recently as five years prior and which is now a blossoming arts and innovation area of the city – and renovated the building into 15,000 square feet of office space. In developing the space, the shareholders' vision was to add to the unique character and flavor of the Film Row District by incorporating community oriented areas and space – a concept that the firm's community clients indicated was sorely lacking in Oklahoma City.

In keeping with this vision, the building's design incorporated more than 2,000 square feet of open space for use by the firm's employees and community. A significant portion of one parking lot was bulldozed and converted into an outdoor courtyard featuring built-in seating and shaded areas for musicians and artists to congregate. The courtyard is connected to the interior kitchen and event space through the use of a large commercial glass overhead door which floods the interior areas with light and fresh air. All of the furniture and fixtures are on wheels to facilitate repurposing the space to meet the unique and individualized needs of the innovators, creators and artists within Oklahoma City. The space has even been given a persona – DC on Film Row – and has, of course, its own website (www.dcfilmrow.com) and Twitter and Facebook personas.

The firm isn't content with simply providing the space; groups and organizations within the community are offered use of the space for free. As shareholder Douglas Sorocco said, "We wanted to be a good neighbor to everyone within the community. We wanted to create a 'place' in which people could get together and work to make things better. Everyone and anything that brings the community together is invited to use the space. Our only rule is nothing that divides. As we say, if you'd like to use the space for an event, just ask, and we'll probably say yes." Depending on the circumstances and on the type of event or organization using the space, the firm provides use of its kitchen amenities, including free use of the soda, coffee, and water/ice machines.

As an effort to reach out to everyone in the community, the firm partnered this last summer with a local church to open the space to the homeless population living in downtown Oklahoma City. The church provided food while Dunlap Codding contributed beverages, paper products and the staffing to facilitate the event. Upon seeing the need, firm members rallied by seeking out and obtaining articles of clothing, hygiene items, backpacks and suitcases from throughout the community and provided these items to their homeless guests. The firm's kitchen, social area, and courtyard were open from 5 until 8 p.m. so that those attending could relax and escape the brutal Oklahoma City summer heat, mingle, charge their cell phones, and eat dinner in an atmosphere of inclusion and community. Dunlap Codding will resume this service to the homeless again in the spring and has actively sought support and involvement from others in the Oklahoma City business community.

Dunlap Codding started "Food Truck Wednesdays" as another means of creating community and bringing our neighbors together. The firm arranges for a local food truck to be on site for lunch, hires local emerging musicians to play



for the crowd, and opens its courtyard and kitchen/lounge as an impromptu neighborhood networking space. The firm is also a sponsor of "Premiere on Film Row," a monthly Art Walk/Street Festival, and provides its community space to local artists and musicians. As part of Premiere, Dunlap Codding partners with a community organization to orchestrate family-friendly events, such as bounce houses in August, an innovative science instruction "parklet" in September, and a haunted house in October. All of these occasions are not simply a way of drawing the community together, but also serve as opportunities for members of the firm to rally together and work as a team. The recent haunted house was a particular team effort as attorneys and staff carved pumpkins, turned the interior of the firm into a frightening haunted Asylum, dressed as zombies, and created a terrifying experience for the children and parents of the community.

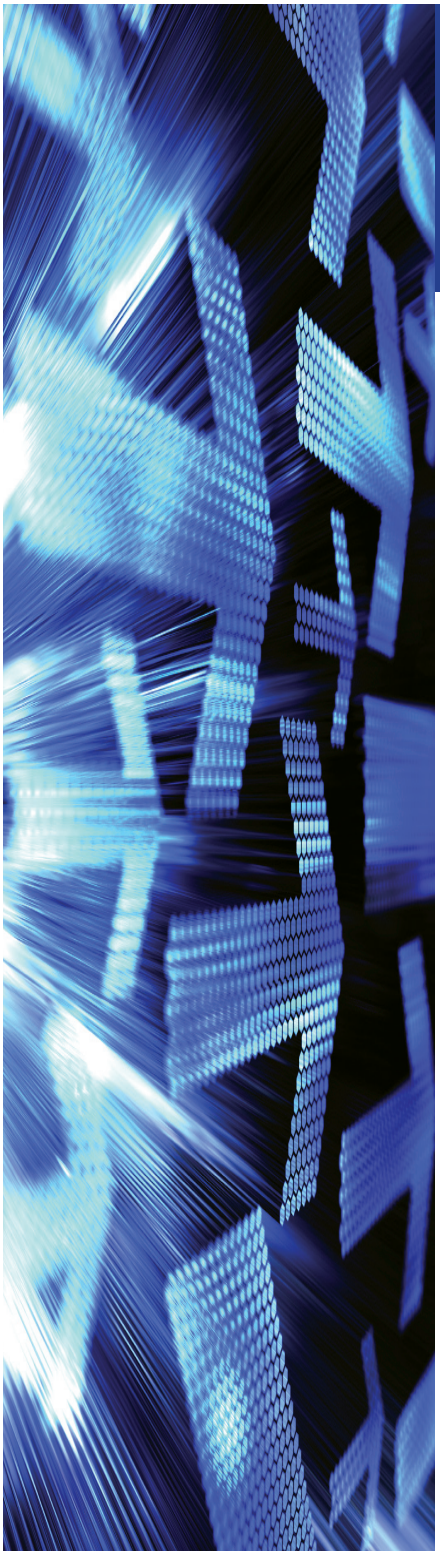
IgniteOKC, a fast paced speaking event originally started and sponsored by Dunlap Codding in Oklahoma City, was one of the first community creative groups to make use of the firm's hospitality, holding its board and planning meetings on site over the course of several weeks leading up to IgniteOKC 5. The firm also hosted a leadership and training meeting and party for the students during the deadCenter Film Festival. Dunlap Codding served as command central and headquarters for the volunteers and staff running the OKC Pride Parade. Oklahoma City's Chamber of Commerce held a monthly Sunset Reception networking event on site recently. OHM Space – a "hackerspace," a pre-incubator setting where tinkerers/creators can use manufacturing equipment that would otherwise be too costly to use – also holds its planning and board meetings at Dunlap Codding.

Other recent events sponsored or hosted by the firm include:

- Oklahoma County Youth Services benefit to raise money for an apartment and school complex for the homeless
- Canterbury Choral Society's VIP after-party
- Individual Artists of Oklahoma (IAO) Gallery's Red Dot Recharged VIP Party, an upcoming event to benefit the Gallery
- OKC Talk (Oklahoma's largest talk forum and community website)
- Wedding receptions, baby showers and other family oriented events that require a space to gather and strengthen commitments and ties

The firm's employees form bonds and have fun as they collaborate to host and participate in these varied events. Networking opportunities abound. Of course, Dunlap Codding also gives back to its profession and the community in more traditional ways, such as by volunteering time and donating money to causes and initiatives. The firm has found, however, that providing a place for the community – for everyone in the community – to gather is oftentimes greater than the sum of both money and time.

Dunlap Codding, like the Hawaiian missionaries of old who "came to do good and did well," thrives by supporting all of its neighbors, the creative community and the community at large. For a firm in the business of helping clients protect their reputations, inventions and brands, the small step of opening its doors and inviting people into its space has been a way to give (and receive the blessings of giving) organically.



2014 Calendar of Events

Scan this with your smartphone to learn more about Primerus.

February 5-7, 2014 – Young Lawyers Section Boot Camp
New Orleans, Louisiana

March 6-7, 2014 – Primerus Business Law Institute Asia Pacific Meeting
Shanghai, China

March 7, 2014 – Western Regional Meeting
Los Angeles, California

March 13-14, 2014 – Primerus Defense Institute Transportation Seminar
Las Vegas, Nevada

March 21, 2014 – Primerus Southeast Regional Meeting
Miami, Florida

April 9-13, 2014 – Primerus Consumer Law Institute Spring Conference
New Orleans, Louisiana

April 24-27, 2014 – Primerus Defense Institute Convocation
Scottsdale, Arizona

May 15, 2014 – Business Law Institute Symposium
New York, New York – *Presented jointly by Thomson Reuters and Primerus*

June 19-21, 2014 – Primerus International Conference
Zurich, Switzerland

October 9-12, 2014 – Primerus Global Conference
Monterey, California

October 28-31, 2014 – Association of Corporate Counsel Annual Meeting
New Orleans, Louisiana – *Primerus will be a corporate sponsor*

There are other events for 2014 still being planned or considered which do not appear on this list. For updates please visit the Primerus events calendar at www.primerus.com/events.

For additional information, please contact Chad Sluss, Senior Vice President of Services, at 800.968.2211 or csluss@primerus.com.

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