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FALL 2016

Clients Join Primerus to Propel Mission

Primerus Client Resource Institute: Making Clients Part of the Family

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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

This year, Primerus launched the Primerus Client Resource Institute – a new opportunity for clients to join the Primerus family and receive valuable benefits. In this cover, we unveil part of the institute's new logo. Read more about the institute starting on page 4.

Scan this with your smartphone to learn more about Primerus.

Primerus
The World's Finest Law Firms

Publisher & Editor in Chief: **John C. Buchanan**
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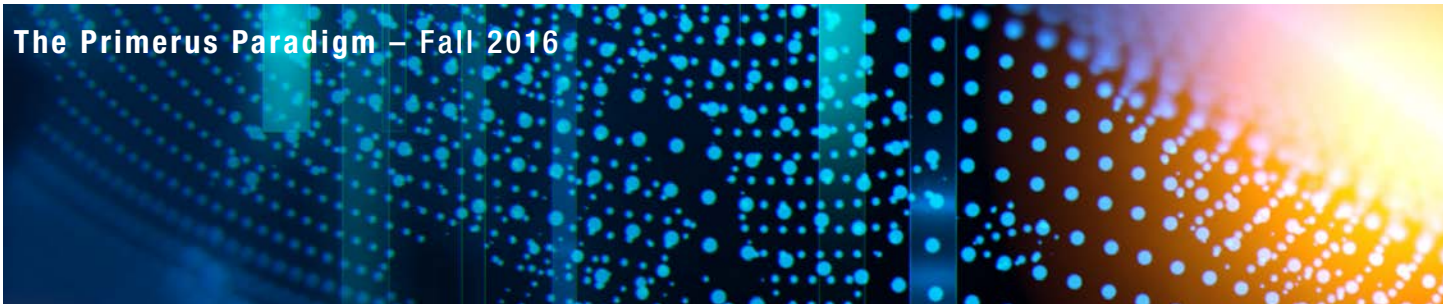

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President's Podium

John C. Buchanan

Clients Join Primerus to Propel Mission

Hello, Primerus friends. I am excited about this issue of *The Primerus Paradigm*, as we are unveiling an innovative and unprecedented opportunity that will benefit you – our trusted clients. But first, let me start with a story…

I will never forget the time a client approached me at a Primerus event and asked me if his company could join Primerus, pay the membership dues and become a bona fide Primerus member. This client loved Primerus and wanted to become our first client member.

I told him I was flattered, but that we did not want him to become a dues-paying member of Primerus. Rather, we hoped he would continue to attend our events, develop trusted relationships with our attorneys and hopefully rely on them for quality legal work when needed. Equally as important, we wanted him to advise us and our members in our efforts to improve today's legal profession and help us do a better job of fulfilling our mission.

Years later, this client will now have the opportunity to join the Primerus family – but without the dues, of course! After more than three years of work, we have created the Primerus Client Resource Institute (PCRI).

The institute is designed for clients around the world (in-house legal counsel, risk managers, claims managers and corporate executives responsible for legal oversight) to join Primerus in our work to improve today's legal profession – and to accept our thanks for your dedication to this work.

Clients may join the institute – at no cost – and enjoy perks including a free 30-minute legal consultation phone call with any Primerus member anywhere in the world, access to free Primerus educational webinars, access to Primerus listservs for various legal specialties, and the opportunity to participate in committee membership meetings in various practice areas. There's no obligation to hire Primerus attorneys, but we hope that the relationships developed through the institute will endear you to our family even more. The institute also gives members the benefit of having a community of fellow in-house counsel.

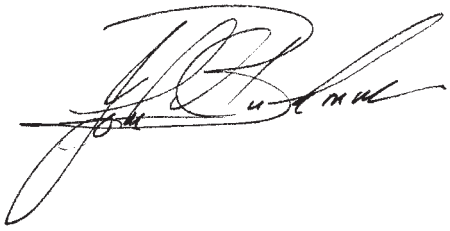
At Primerus, we take very seriously our mission to bring together good clients with trusted, highly capable attorneys who charge reasonable fees. We are committed to providing opportunities for this to happen in meaningful, relationship-building ways that go way beyond the traditional "marketing" opportunities you often see in the legal industry.

This new institute will take that opportunity to a whole new level. It is a thrilling next step!

After getting positive feedback from Primerus members and clients about this concept for the past three years, we proposed the idea at a gathering in New York City in January. We received overwhelming support, so we launched the PCRI at the Primerus Defense Institute Convocation in April.

Now, more clients are stepping forward to join, and we hope you will do the same. We simply cannot do the revolutionary work of transforming the legal industry without substantive dialogue between clients and attorneys. Please continue to join us in this conversation, whether by joining the PCRI, attending a Primerus event, or reaching out to us to help you find a quality lawyer right where (and when) you need one.

At Primerus, we take very seriously our mission to bring together good clients with trusted, highly capable attorneys who charge reasonable fees. We are committed to providing opportunities for this to happen in meaningful, relationship-building ways.



Primerus Client Resource Institute: Making Clients Part of the Family

There have always been many ways for clients to become involved in Primerus – getting to know trusted Primerus attorneys, attending Primerus events or serving on advisory boards.

But now Primerus is taking client involvement to a whole new level with the Primerus Client Resource Institute (PCRI).

Launched in April, the institute offers an unprecedented opportunity for clients to join the Primerus family and work together to improve the quality of legal services available today – while also receiving valuable benefits for free.

"The institute was created because of our desire to makes clients bona fide members of Primerus, so we can work even more closely together to improve the legal profession across the globe," said Primerus President and Founder Jack Buchanan. "We also wanted the institute to be a way we can give back to the clients who are dedicated to joining us in this effort."

The institute will bring together in-house legal counsel, risk managers, claims managers and corporate executives responsible for legal affairs from around the world. There is no cost to join the institute, and clients who join are in no way obligated to hire Primerus lawyers.

PCRI members are eligible for perks including a free 30-minute legal consultation phone call with any Primerus member, anywhere in the world, access to free Primerus educational webinars, access to Primerus listservs in various legal specialties, and the opportunity to participate in committee membership meetings in various practice areas.

Primerus member Duncan Manley, a partner at Christian & Small in Birmingham, Alabama, is chair of the institute's executive committee.

"Recognizing how fortunate Primerus lawyers are to represent so many clients who have been loyal to us over the years, we were searching for a way to express our gratitude in a professional way," Manley said. "We are now working hard to disseminate information on the institute to our clients. It is our way of giving back or paying forward."

Bringing Together Good Clients and Good Attorneys

Robert Woods, senior vice president of claims for Energi, Inc. – a provider of specialized insurance and risk management solutions based in Peabody, Massachusetts – was among the first group of clients to join the institute.

Woods first learned about Primerus through Fred Johs, partner of Primerus

member firm Lewis Johs Avallone Aviles, LLP in New York, New York. Woods was very pleased with the work of the firm, including attorney David Fink.

"He was always available to me, 24/7, by phone. He would dispatch an accident reconstruction team to an accident site to preserve evidence for us," Woods said. "You don't always find a law firm that's willing to respond 24/7, but they always were."

Because he was so pleased with Lewis Johs, Woods took advantage of the opportunity to meet other Primerus firms by attending Primerus events, including the Primerus Defense Institute (PDI) Convocation in April 2016 in Napa, California.

"I was very impressed with the caliber of the presentations and meeting similar minded firms to Lewis Johs," Woods said. "From meeting people at Convocation, we started expanding our network of Primerus firms around the country."

Now, he looks to Primerus to help as he builds his litigation team. "My litigation manager regularly looks up Primerus firms to find good panel defense firms," Woods said.

Working with Primerus has been such a positive experience that he welcomed the opportunity to join the PCRI. "If there's something I can do to help Primerus, and vice versa, I would love to do it, so I signed up," he said.

Woods thinks the institute will be helpful in many ways, as it allows Primerus law firms and clients to learn from one another and work together on important issues facing the legal profession today.

"Any time you put together similar minded people, it's a real benefit," he said.

In the legal world, according to Woods, there are not a lot of opportunities to sit down for true collaboration – that's not overly focused on marketing. "I think it's high time we stop marketing and focus on relationship building," he said.

Buchanan and Manley agree – and that's exactly the hope behind the institute.

Mark DiGiovanni, vice president of litigation management for Global Indemnity Group in Bala Cynwyd, Pennsylvania, joined the PCRI in hopes of strengthening his relationship with Primerus, which has proven a great resource for hiring local attorneys when he needs them.

His connection to Primerus started with Edward Murphy, a partner of Primerus member firm Lipe Lyons Murphy Nahrstadt & Pontikis in Chicago, who was on the attorney panel for Global Indemnity Group when he started his job there in 2008. He later learned a longtime friend, Thomas Paschos of Thomas Paschos & Associates in Haddonfield, New Jersey, was also a Primerus member.

"For a long time, when I would need counsel in different states, I would call Ed or Tom," DiGiovanni said.

He then became more involved in Primerus, including speaking on a panel at the 2015 PDI Insurance Coverage & Bad Faith seminar in New York City and at the 2016 PDI Convocation in Napa, California. "I keep meeting good lawyers and adding them to the panel," said DiGiovanni, who now has worked with about 12 Primerus firms across the country.

DiGiovanni said he likes hiring local attorneys to work on cases, and he always needs good litigators. He also said that he needs attorneys who can find creative solutions and "look at things out of the box."

Before Primerus, when he needed an attorney in a new area, he would call an attorney in a neighboring state, go to Martindale Hubbell, or even use an internet search.

"Primerus is a great organization," DiGiovanni said. "I have been really pleased. It's the ultimate resource. Now if I need someone quick, I don't have to waste time going through all those steps."

Paying It Forward to Clients

Currently, the institute has about a dozen members, with more joining every month. The PCRI will gather at the Primerus Global Conference October 13-16 in Washington, D.C. for a seminar including lunch and a cocktail party.

According to Manley, clients should take advantage of the perks they receive for joining:

- **A free 30-minute legal consultation phone call with any Primerus member, anywhere in the world**

  Primerus attorneys frequently take calls from clients and provide advice for free, but now the offer is more public, Manley said. Buchanan said this benefit also gives clients the freedom to call *any* Primerus attorney, anywhere in the world – not just a Primerus member they might have met at an event.

  "The motivation is to provide something to clients that they may have thought they had access to, but were not so comfortable asking for," Manley said. "Now they know it is available, and hopefully they will take advantage of the offer."

- **Access to Primerus listservs, available in various legal specialties**

  PCRI members will have access to Primerus listservs, offering clients valuable access to inquiries about expert witnesses, as well as advice from Primerus members about other legal matters.

- **Opportunity to participate in committee membership meetings in various practice areas**

  Institute members will have access to meetings of practice committees in areas including: bad faith defense litigation, corporate transactions, defense litigation, employment law, governmental affairs, health law, intellectual property, international law, medical liability defense litigation, mergers and acquisitions, product liability defense litigation, real estate and transportation defense litigation.

- **Access to free Primerus educational webinars**

  PCRI members may participate in Primerus webinars on substantive legal topics for free.

- **Assistance in finding the right Primerus lawyer to meet your needs**

  Clients may access ***primerus.com*** or call Primerus any time for personal help finding a lawyer. If Primerus does not have a Primerus law firm in the particular city and expertise needed, they will seek a recommendation from a Primerus member.

Reinier Russell, managing partner of Primerus member firm Russell Advocaten in Amsterdam, the Netherlands, said he hopes the PCRI will help spread the message that Primerus attorneys are always available to clients.

"It is always important to have 'friends,'" Russell said. "We hope that the 'friends' of Primerus and our future clients (get to) know that the Primerus lawyers around the world are globally approachable and available for legal advice for their day-to-day business operations and/or specialized legal services."

Buchanan said the PCRI represents three years of work responding to many client requests to become part of Primerus.

"This concept is unique to Primerus. No one else is offering this to clients," Buchanan said. "There are a number of things clients need and law firms are not providing them. We recognized the disconnect in the market and we decided to see if Primerus, which is not a law firm, could fill that gap. That is why we created the PCRI, and we are excited to see where it leads us in the future."

If you wish to be considered for membership in the institute, please call or email Chad Sluss at 616.454.9939 or csluss@primerus.com with the following information – name, phone, company name, email and title. Upon submission of an application, membership must be approved by the Primerus Client Resource Institute Executive Committee.

Giving Stock to Key Employees: Good Idea or Bad Idea?

As a small business grows, it is not unusual for a critical employee to ask the owner for stock in the company, or for an owner to believe that providing stock to a key employee is appropriate, and maybe even necessary, to keep the employee. For a restaurant that wants to keep a great chef, or any business that wants to retain an effective manager of operations, giving stock could look like an attractive way of retaining the employee while enhancing the employee's motivation as an equity partner.

However, business owners should understand that there are very significant legal duties owed to minority shareholders, and if relationships sour, it is not uncommon for minority holders to flex their legal muscles, alleging that majority owners have violated any number of their legal duties. That is why small business owners are well advised to consider other means of rewarding, retaining and motivating their top talent.

Majority owners have legal duties of loyalty, good faith and honesty in dealing with minority shareholders. These duties have been interpreted by the courts to impose a variety of obligations on majority owners. As a result, minority owners have certain rights that ordinary employees do not have when, for example, the majority owner sells the company, terminates the shareholder-employee, decides to go out of business, or takes monetary or other benefits (often called corporate opportunities) that are not offered to all stockholders.

The courts have imposed a number of disclosure obligations relating to certain business events and decisions. For example, most states require that owners provide shareholder-employees with certain types of business information, including periodic financial information, in connection with their stock ownership.

It should be noted that experienced legal counsel can help devise creative ways to retain and motivate key employees without endangering the business, or unduly restricting the owner's discretion to operate the business as he or she deems appropriate.

Owners might retain employees through the carefully crafted use of incentives such as:

- Pay increases or bonuses tied to the employee's or the company's performance;
- Life insurance or health insurance benefits;
- Vehicle, entertainment or other expense allowance; auto insurance and travel expense reimbursements;
- Deferred compensation plans; and
- Other solutions fitted to the needs and means of the business owner.

In some cases, key employees will even value low-cost or no-cost solutions that give them more public notoriety or credit, such as touting the name of the employee on websites, printed materials and signage.

No doubt, there are certain business owners who do feel they have no choice but to give stock to key employees. (Unfortunately, some of my clients who have done so later said they should have listened to me.) These are some of the things we recommend if stock is given to an employee:

1. Be sure that if the employee is terminated, the company can buy back the stock, usually at a formula pre-determined in a stockholder's agreement. (I advise using book value or some other formula as opposed to fair market value.)
2. Give the company the right to buy back the stock at a lower price from any employee/stockholder who is terminated for cause.
3. Restrict the employee-stockholder's right to transfer the stock without the consent of the majority of stockholders. This may become especially important if the employee gets divorced.

James L. Rudolph

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4. Keep a majority (51 percent) interest in the company. There is a big difference between owning 49 percent, 50 percent and 51 percent of the stock.
5. If the company has a policy of reimbursing the owner for certain expenses, have the employee acknowledge and agree to these expenses continuing to be paid.
6. Have the shareholder's agreement specifically waive any fiduciary duties that the shareholders may have by law to each other.

In any event, an owner must seek reliable counsel to craft the right solutions for the situation, and to provide confidentiality and non-compete restrictions where necessary and appropriate. P

Proactive Defense Litigation: Tactics to Employ for Early Resolution

The approach to civil litigation by the defense industry as a whole is cyclical; however, it has and always will remain a results-oriented practice. With the infusion of litigation monitoring software over the past decade, the claims climate has changed. The three primary factors that corporations consider when faced with ligitation are as follows:

1. End result;
2. Costs incurred;
3. Timeliness of the process.

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With the above factors in mind, the general counsel looks for the seasoned defense attorney to quickly implement several practical strategies to quickly achieve the best results. This article outlines some initial tactics and methods that can be utilized by in-house or outside counsel.

Many litigators and trial attorneys have been trained over the past 30 years to "bunker down" in battle and to win at all costs in defending clients in lengthy litigation proceedings. Sometimes that approach is necessary and effective, depending upon the type of case involved and the parties' appetite for a trial. However, with routine cases, corporations do not want their lawyers to win a battle but to "lose the war" when it comes to excessive defense costs and protracted litigation. The "bunker down" approach to litigation is usually disfavored.

Immediate and proactive strategic planning must be implemented upon the initial review of the claim. The end result of concluding litigation at a low reasonable cost is not likely when the litigation approach is reactive as opposed to proactive.

Identifying Personal Issues

Upon an initial assignment, the initial steps are vital. Early identification of personal issues pertaining to the plaintiff can provide the roadmap for the initial litigation strategy. One of the best initial tools is often Google or other search engines. The following issues should be explored during the initial pleading stage, especially before the plaintiff's attorney starts advising his or her client to remove or privatize information as party depositions become scheduled.

A. **Family Life and Background:** Discover whether there are resident relatives of plaintiff, where do her children or spouse (possibly former spouse) reside, are in-laws involved with plaintiff on a day to day basis?

B. **Employment:** Find out where, and for whom, does plaintiff work, who are the prior employers, what are the patterns in terms of departures from employment.

C. **Co-Workers and Supervisors:** Identify any co-workers, supervisors, or prior supervisors.

D. **Social Media:** Research all public postings by plaintiff, family members and employers. Social media posts often contain photos of plaintiff before and after an incident.

E. **Criminal Searches:** Conduct criminal background searches immediately through government sponsored sites so that information is obtained before any depositions are conducted.

F. **Medical Providers:** If plaintiff's attorney has forwarded medical records on a pre-litigation basis to the insurance carrier, conduct general searches on the treating physicians and surgeons.

Sample Case Study

The following is a sample fact pattern for consideration:

> Plaintiff is a 68-year-old widow who resides in Bronx County, New York, in an apartment with her son, her

daughter-in-law and her two-year-old grandson. She is claiming neck, back, right shoulder and right knee injuries as a result of a light impact, hit-in-the-rear motor vehicle accident between defendant's box truck and plaintiff's Toyota Camry. She was treated and released the same day from the ER and missed an initial three months from work as a cashier at the local supermarket. She missed another three months from work after arthroscopic knee surgery was performed to repair an allegedly torn medial meniscus. The surgery was performed by Dr. X, a ubiquitous presence in litigation circles.

Upon assignment, the defendant must quickly identify proximate cause as his or her primary defense to damages. An agreed upon plan must be established. It is agreed that a thorough informal search upon plaintiff and her family is in order and the following information is obtained:

A. Plaintiff's son and daughter-in-law are working young parents and they have a two-year-old son residing in the same apartment with plaintiff. The daughter-in-law commutes to Manhattan from the Bronx as a marketing executive with a major broadcasting company. The son is a local carpenter.

B. Plaintiff works for a local supermarket chain that has a company Facebook page and several blurbs/photos regarding the employees of the month and their company gatherings.

C. The long-time manager of the supermarket is easily identified during a Google search regarding the supermarket.

D. Plaintiff is not active on any social media platforms; however, a quick search on plaintiff's son reveals that he is very active on Facebook and posts photographs almost daily. Several photos of the plaintiff are seen during the initial brief search.

E. Dr. X, the orthopedic surgeon who performed ambulatory surgery on the plaintiff 11 months following the accident, was the subject of a fraud investigation several years prior to the accident.

What should the defendant attorney do with said information? A strategy conference call should be held. An under-utilized tool by defense attorneys is a simple one, i.e, a non-party deposition. Authority to conduct non-party depositions of family members and co-workers should be explored before party depositions and expert discovery proceedings even begin. In most state court jurisdictions, a party may serve the state equivalent of Rule 74 deposition subpoena/notice once issue is joined in the case.

Non-Party Depositions

The above sample fact pattern highlights some easily identifiable sources of future impeachment evidence. The traditional litigation chronology is to serve an Answer to the Complaint, along with discovery demands and a notice to depose plaintiff. The depositions and discovery process in general are often delayed for months or years. The quick non-party deposition approach to the above fact patterns is effective on many levels.

Non-party depositions of the plaintiff's family members and supervisor in the above fact scenario may yield surprising results. The mere service of the subpoena and notice directly upon the son and daughter-in-law may rattle the family and spur more reasonable negotiations due to inconvenience on the plaintiff's part. If plaintiff is undeterred by the non-party deposition subpoena, the depositions themselves may have a chilling effect on their claim. In reality, the daughter-in-law in the above case, which was based on a real fact pattern, did not want to be dragged into her mother-in-law's personal injury claim. It was evident that their relationship was a bit strained anyway. When the daughter-in-law was asked about whether she knew of the plaintiff's prior neck injury claim, the daughter-in-law was angered and expressed displeasure regarding her involvement in the case and a heated conference was held outside of the deposition among plaintiff's attorney and all of the family members. The deposition of the son regarding his child and whether the plaintiff was a loving grandmother/caretaker yielded answers regarding how active and wonderful the plaintiff was regarding the everyday life of the two-year-old grandson. The overall result of the depositions of the family members was that (a) the family did not want their lives disrupted based upon this light impact claim, and (b) that a picture was painted of the plaintiff as an active 68-year-old grandmother who was fully involved in the grandson's life, often as a babysitter and playmate (and not as a disabled, immobile sufferer).

After an Offer of Judgment was served immediately following the non-party depositions, the case settled before party depositions were conducted and before experts were retained. A Rule 68 offer can be made at any time after the plaintiff's lawsuit is filed, so long as it is filed at least fourteen days before trial. *Fed. R. Civ. P. 68(a).* The above case settled at a figure under the reserve amount initially set by the carrier based upon the unfavorable liability scenario and the surgery to the knee.

By an overwhelming margin, most civil cases are resolved prior to trial. Early litigation tactics, such as early background searches and non-party depositions, can provide several pieces of evidence to help defendants "win the settlement." Defense attorneys often wait for the court to mandate mediation after all of the party and expert depositions are conducted rather than trying to win the case in the initial pleadings or discovery stages. Controlling the timing of discovery and non-party discovery leads to obtaining maximum leverage in the litigation process and the best, most cost effective results for the client. A simple approach is often the best.

Guidelines for Successful Puerto Rico Asset Purchases in Bankruptcy

Section 363 of the Bankruptcy Code provides for the sale of property of a Chapter 11 debtor in bankruptcy. Through this process, parts of a business or an entire enterprise may be sold. Innovative practices have made such sales more valuable to the reorganization of business enterprises because bankruptcy courts have, in recent years, become much more receptive to traditional acquisition techniques. These techniques, including auctions, customary acquisition agreements, use of financial advisers and payment of break-up fees, have made investing through the bankruptcy sale process more efficient.

In addition, bankruptcy courts can assure purchasers, under the proper circumstances, that assets may be purchased free and clear of encumbrances and that successor liability may be minimized, thereby adding value to the assets being sold by the debtor. Thus, these sales create significant strategic and financial opportunities for investors.

This article is intended to familiarize readers generally with the landscape of an otherwise fairly complicated process involving the sale of assets of a debtor in bankruptcy. It also highlights some of the more important and easily misunderstood issues faced by potential purchasers of such assets.

Bidding Procedures

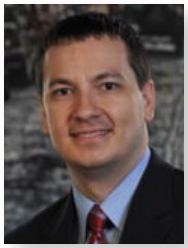
There is no set formula that must be adhered to in connection with the sale of a debtor's major assets. In general, however, bankruptcy courts will require some sort of open bidding procedure, often in the form of an auction, before approving the sale of significant assets of a debtor. The purpose of this process is to ensure that the debtor's estate, and thus its creditors, realize the greatest return from the sale of the assets.

Bidding procedures may involve a number of items, including setting the auction date, specifying the assets to be sold, establishing a break-up fee and the initial overbid and bidding increments (that is, the amounts by which subsequent bids must exceed prior bids). Any proposed bidding procedures must ultimately be approved by the court, after notice to interested parties and an opportunity for parties with a pecuniary interest (i.e., creditors) to be heard.

The Stalking Horse Bidder

Investors may first learn of an opportunity to purchase assets in a bankruptcy sale process from a third party exploring the marketplace in an attempt to gauge interest. Generally, the first to bid is known as the stalking horse bidder, and while there may be an initial reticence in bidding against yourself, there are some distinct advantages to being the stalking horse bidder.

If you, as the prospective stalking horse bidder, make an acceptable offer for the debtor's assets, you and the debtor will likely enter into a letter of intent, or possibly go directly to definitive documentation by way of an asset purchase agreement. It is important to remember that it is generally not possible to lock up the purchase prior to obtaining approval of the sale from the bankruptcy court. Usually, third parties will have the opportunity to come to court on the day the sale is scheduled for approval and offer a higher purchase price. This is more likely to succeed if the new offer is on the same terms as the initial offer. This notwithstanding, after the parties have agreed to the terms of the deal, but



Paul Hammer

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before a firm offer is made, the purchaser has the most leverage in imposing its terms on the debtor. For example, the stalking horse bidder can condition its bid on court approval of certain bidding procedures. If the proposed procedures are not approved, the purchaser will generally reserve the right to withdraw the bid without penalty.

The Bidding Process

In negotiating the initial offer, the goal of the prospective purchaser obviously is to acquire the desired assets at the best price. Generally, you can expect that the debtor will establish a "data room" for interested bidders to conduct due diligence. If you are going to enter the bidding process and conduct due diligence, expect to be asked to sign a confidentiality agreement. Any offer to purchase the debtor's assets will require court approval, will be subject to higher and better offers and will immediately become public knowledge. In part, these requirements are designed to ensure that only sales that are negotiated at arm's length, in good faith and without collusion are approved by the bankruptcy court.

The Sale Date

From the perspective of the stalking horse bidder, the earlier the auction the better. An earlier auction provides less time for other prospective bidders to formulate their bids and may make it more likely that additional bidders will fail to satisfy the requirements set forth in the bid procedures. There may, however, be a less subjective reason for holding the sale as soon as possible. If the debtor's assets are declining in value, the sooner the sale the more value the assets will bring. In many instances, however, local rules of practice will impose parameters with regard to how much and to whom notice must be given. In contrast to the stalking horse bidder, who wants to move the process along as quickly as possible to frustrate potential competitors, creditors will want to stimulate the bidding in the hope of receiving one or more higher bids. From the creditors' perspectives, the longer the process, the greater the likelihood of obtaining the best possible price for the assets. This is particularly true if the assets are not declining in value.

A word here about the provisions of the asset purchase agreement pertaining to representations and warranties: the purchaser will want some recourse if something should go wrong after the sale closes. The purchaser will generally understand that the debtor may not be able to respond to a breach of contract claim. However, if the estate will have substantial assets after the sale, the purchaser would not want to limit his or her claim for potential breaches of representations and warranties. The principal concern of the purchaser should be to obtain full disclosure of all information about the assets he or she is buying through representations and warranties, and some assurance that the debtor's operational controls are maintained so that the assets do not lose value through the bidding and pre-closing period. Thus, the purchaser will want, at the very least, to ensure that the accuracy of the representations and warranties be a condition precedent to closing and may want a hold back of a portion of its purchase price to cover post-closing adjustments and breaches of representations and warranties.

The debtor and the creditors will want to avoid making any representations, warranties or indemnities that could create a risk of additional claims that will dilute the sale proceeds available for distribution to creditors. The argument most often used by the debtor and the creditors to avoid making such representations and warranties is that the purchaser can rely on the sale order issued by the bankruptcy court for comfort. If drafted properly, the sale order will offer greater protection than any representation or warranty – for example, a sale order will vest title in the purchaser free and clear of all liens and encumbrances, and can cut off successor liability. Generally, the only way to obtain representations and warranties in the asset purchase agreement is to create an economic incentive by offering to pay for the representations and warranties.

The Auction

The auction process may take many forms. Usually, there will be a deadline set by the court for interested parties to announce their intention to submit bids that exceed the initial bidder's offer by the requisite overbid amount. If no such notice of a competing bid is received by the bid deadline, no auction will be held and the parties will go forward with the proposed sale agreement. If one or more such notices are received by the deadline, however, some type of formal auction will generally be held, usually at the office of the debtor's attorney or in open court.

The debtor and the creditors will generally look for the most cash, with a minimum of risk; however, the creditors' may advocate a more risky deal if they are "out of the money," that is, if there is no value in the assets being sold over and above that which is owed to secured, administrative and priority claimants. A higher, riskier bid may provide the creditors a chance at some recovery from the case which would not be available with the less risky deal.

As highlighted above, purchases of distressed assets in bankruptcy can be advantageous and viable to investors that are versed in the applicable Bankruptcy Code provisions.

Providing Equity Compensation to Employees

Many business owners wrestle with the dilemma of how to provide equity compensation to employees on a tax efficient basis which is attractive to both the employer and the employee. These issues and decisions differ depending on the structure of the business, whether corporate or partnership. Below are considerations and the impact of each when providing equity compensation to employees.

Corporate Equity Compensation

First consider whether the employer wants the employee to pay for the stock.

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If the answer is yes, an option to acquire employer stock is the appropriate choice. Options allow employees to benefit from the increase in value of the stock because employees can wait until the underlying stock appreciates to exercise the option. An option can be tailored by the employer to be exercisable immediately, or in installments based upon future events, such as continued employment or attainment of performance criteria.

If granting options is the correct decision for the employer, next consider whether the employer wants a federal income tax deduction for the "spread" between the option exercise price and the fair market value of the shares subject to the option at the time the option is exercised. If the employer expects a deduction, the employee will recognize income in the amount of the employer's deduction.

If the employer expects a federal income tax deduction, the option granted will be a non-qualified stock option (NQSO). With NQSO, the employee recognizes income at the time the option is exercised in the amount of the spread, and the employer is entitled to a corresponding deduction. NQSOs should be granted at an exercise price equal to the fair market value of the stock on the date of grant in order to avoid potential deferred compensation issues. The fair market value of the stock on the date of grant can be determined using minority interest and lack of marketability discounts, if appropriate.

If the employer desires to forego the deduction associated with a NQSO, the employer can grant an incentive stock option (ISO). When the employee exercises an ISO, the employee does not recognize income in the amount of the difference between the exercise price and the fair market value on the date of exercise. ISOs are subject to statutory requirements under the Internal Revenue Code, and have certain rules and restrictions. An ISO must be granted pursuant to a written plan approved by the stockholders of the employer within 12 months after the plan is adopted, must be granted within 10 years of the date the plan is adopted and cannot be exercisable after the expiration of 10 years from the date of grant. The exercise price must not be less than the fair market value at the time the ISO is granted, and ISOs may not be granted to any individual who owns more than 10 percent of the stock of the employer.

If the employer is willing to provide equity without requiring any payment from the employee, the equity is essentially a substitute for a cash bonus. Stock can then be awarded to the employee. The award can vest immediately or over time and may be subject to restrictions on exercisability.

If the stock vests immediately, the employee will be taxed on the fair market value of the stock at the time it vests, and the employer will obtain a federal income tax deduction in the same amount. Fair market value can be determined by taking into account minority interest and lack of marketability discounts. If the stock vests over time, based, for instance, on continued employment as of specific future dates or on the achievement of performance criteria by the employee, the employee will be taxed on the fair market value of the stock at the time it vests and the employer will be entitled to deductions in equivalent amounts at such times.

When stock awards vest over time, an employee must decide whether a Section 83(b) election should be made. If the stock vests over time based upon certain events and restrictions, the stock is subject to forfeiture if these events do not occur. Because the employee recognizes income when these restrictions lapse, the employee will, absent a Section 83(b) election, recognize income at such times and in the amount of the fair market value of the stock at the time it vests. To mitigate against this potential increase in taxable income, the Internal Revenue Code permits the employee to make an election under Section 83(b) to recognize income immediately based upon the fair market value of the stock on the award date rather than on the future vest date.

Partnership Equity Compensation

Unlike corporate employers, partnership and LLC employers generally do not grant options because options do not work efficiently with profits interests. Additionally, incentive stock options are unavailable to partnerships. Therefore, an employer must determine whether the employee will be granted a capital interest or a profits interest in the partnership.

A capital interest is an interest that would give the employee a share of the proceeds if the partnership's assets were sold at fair market value and the proceeds were distributed in a liquidation of the partnership. This determination is generally made at the time the capital interest is awarded to the employee.

A profits interest is any interest other than a capital interest. Said a different way, a profits interest entitles the holder to a share of partnership income and future appreciation in value of the partnership's assets, but no share of current proceeds if assets were sold at fair market value on the date the interest was awarded and the partnership was liquidated.

The grant of a capital interest is treated as compensatory to the recipient in an amount equal to the fair market value of the capital interest at the time the interest vests. If the interest vests immediately, the recipient will recognize compensation income immediately. If the interest vests over time, the recipient will recognize income as the interest vests, at the current fair market value of the interest each time it vests, absent a Section 83(b) election. Assuming a capital interest is granted, fair market value for purposes of determining the income recognized by employee and the deduction to which the employer partnership is entitled becomes an issue. In determining fair market value, two choices are available:

1. using valuation discounts for lack of marketability and minority interests, or
2. by making a "safe-harbor election" to have all compensatory partnership interests valued using a liquidation value approach in which the value of the interest is the amount the recipient would receive on the date the interest is awarded if the partnership's assets were sold at fair market value and the proceeds were distributed in a complete liquidation of the partnership.

For a profits interest which either vests immediately, or vests over time and for which a Section 83(b) election is made, the liquidation value safe-harbor election would result in a zero value of the interest for tax purposes which would be beneficial for the recipient because the recipient would recognize no income. Where a profits interest subject to vesting is awarded and no Section 83(b) election is made, the treatment to the employee is problematic. Unless the partnership is revalued under the liquidation approach at each time the interest vests, it is arguable that the profits interest could transform into a capital interest over time and result in the recognition of income to employee in future years as vesting occurs.

If a capital interest is awarded, the safe-harbor election to use the liquidation method should not be made so that minority interest and lack of marketability discounts can be used in determining fair market value. If a profits interest is awarded, the liquidation value safe-harbor election should always be made, and if the interest does not vest immediately, the employee should always make a Section 83(b) election.

The considerations in determining in what form to grant employee equity incentives and the tax consequences are complicated. Always consult counsel and tax professionals before providing equity incentives. P

Sex and Gender: Helping Employers Know the Law

Sex. Gender. Gender identity. Gender expression. Is there a difference, or is it all just sex? The short answer to both questions is yes.

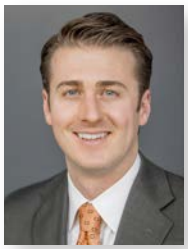
Yes, there is a difference between sex and gender. Sex is determined, or assigned, at birth (e.g., male or female). Gender, on the other hand, refers to an individual's sense of self. Frequently, individuals also describe their gender as male or female. Whether they do or not, employers should understand at a basic level that an employee's gender might not be the same as their birth sex. Gender and sex align for many individuals (gender conforming individuals), but for others, sex and gender may be different (gender non-conforming individuals).

And yes, sex includes gender and gender means sex for purposes of discrimination, harassment and retaliation in the California workplace. The relevant law is the Fair Employment and Housing Act (FEHA). FEHA makes it an unlawful employment practice to discriminate, harass or retaliate against employees based on a protected class. Sex, gender, gender identity – and gender expression are protected classes under FEHA, and each is defined. Under that law, what is important is that harassment, discrimination and retaliation based on sex or gender is illegal; its characterization as gender-based or sex-based harassment, discrimination or retaliation is less important.

Other laws, like FEHA, may similarly include gender as part of sex. Therefore, employers, whether operating in California or elsewhere, should be aware that sex and gender are different, and further, that sex and gender might be the same under applicable law.

The gender identity and gender expression definitions under FEHA are useful for developing a basic understanding of gender. Under FEHA, gender identity means "a person's identification as male, female, a gender different from the person's sex at birth or transgender." Gender expression means "a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." In other words, not only may an employee's gender be different than the employee's sex, but an employee's gender expression may also be different from the employee's gender identity. For example, an employee whose birth sex is male and identifies as female has a female gender identity. That employee might present at work as female or as male, but how that employee presents, or expresses herself, at work (as male or as female) does not affect the employee's gender identity as female.

Since gender is subsumed within sex, the distinction among gender, gender identity and gender expression may mean little in the California harassment, discrimination and retaliation context because whether the unlawful conduct is sex-based or gender-based, it would all be unlawful harassment, discrimination and/or retaliation based on sex. The opposite is not true. Discrimination based on sex may or may not also constitute discrimination based on gender (or gender identity or gender expression). Sex is not defined to mean anything under FEHA. Rather, it is defined to include things. Besides including gender, gender identity and gender expression, sex also includes pregnancy, childbirth, breastfeeding and medical conditions relating to those conditions. This further demonstrates that the legal meaning of sex under FEHA is very broad and does not



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coincide with everyday understandings of what sex means.

FEHA may not be unique in its treatment of sex. For example, federal antidiscrimination law (Title VII) prohibits discrimination based on sex, but does not explicitly forbid employment discrimination based on gender identity. Sex discrimination, on the other hand, is explicitly prohibited. The federal enforcement agency for Title VII, the Equal Employment Opportunity Commission (EEOC), interprets Title VII's ban on sex-based employment discrimination to include gender identity discrimination.

Legal definitions of sex and gender may be imprecise, but employers should be mindful to differentiate between sex and gender. If employment documents are similarly imprecise, they might not get the information they are seeking. Think of a transgender applicant or employee, for example. FEHA defines transgender to mean "a person whose gender identity differs from the person's sex at birth." An employee whose birth sex is female and identifies as male would be a transgender employee under the FEHA definition because the employee's gender identity (male) is different from the employee's birth sex (female). This person would probably mark male if asked his gender and female if asked his sex. (As you may have also noticed, the pronouns used to refer to transgender individuals frequently coincide with the person's gender instead of the person's sex. Continuing to use pronouns that correspond to a transgender employee's sex rather than the employee's gender may be unlawful and could constitute harassment). Whether or not the employee in the example would self-identify as transgender or be considered a transgender employee under other applicable law, a gender non-conforming employee's responses to the questions will likely still vary depending upon whether the questions ask for the employee's sex or gender.

Understanding the difference between sex and gender is also important so that employers can take reasonable steps to prevent and remedy illegal discrimination and harassment in the workplace. Under FEHA, taking all reasonable steps includes having a written harassment, discrimination and retaliation prevention policy that lists the protected classes – including sex, gender, gender identity and gender expression. Employers and employees need to know the differences so that they will know how to avoid unlawful conduct and how the company harassment and discrimination policy will be enforced. Training is one option. California employers with 50 or more employees are required to provide sexual harassment training to their supervisory employees every two years, or within six months of an employee assuming a supervisory position. Employers with fewer than 50 employees, and non-California employers, may still consider training as a reasonable step to prevent and remedy illegal harassment and discrimination in the workplace.

Employers should consider stand-alone workplace gender policies that answer common questions concerning gender non-conforming employees, and that provide guidance concerning the procedures to change names on employment records, the pronouns to use to refer to employees, the use of restrooms, employee privacy, dress codes and health benefits. Workplace transition plans can also guide employers when employees transition from one gender to another while employed by the company. Employers might not currently have any gender non-conforming employees, or, maybe they do. After all, gender identity, different from gender expression, may not be apparent. In either case, gender policies are useful not only to the employer and gender non-conforming employee(s), but also, to coworkers in understanding workplace expectations with respect to their gender non-conforming colleagues.

Remember, sex is not that simple. While gender- and sex-based harassment, discrimination and retaliation might both simply be unlawful harassment, discrimination and retaliation based on sex under applicable law, employers should also understand that there is difference between sex and gender, and that an employee's gender may be different from the employee's birth sex, whether or not that employee identifies as transgender or is considered a transgender employee under applicable law. P

A Double Edged Sword: The Defend Trade Secrets Act of 2016

Intellectual property has gained incredible traction over the years. When we think about intellectual property, we generally think copyright, trademark and patents.

Trade secrets may also fall within the realm of intellectual property, and generally encompass "any confidential business information which provides an enterprise a competitive edge."[1] It may include manufacturing, industrial or commercial secrets.[2] Generally, a trade secret includes information that is not generally known to others and that would not be readily ascertainable by proper means.[3] Thus, a trade secret consists of knowledge that is created by a person or persons, of economic value, for which the creators have an interest to protect.[4]

Trade secret protections vary widely from state to state. Thus, the Uniform Trade Secrets Act (UTSA) was developed and first published by the Uniform Law Commission (ULC) in 1979 as a means of creating a uniform framework for trade secret protections. Since its introduction, 48 states have adopted the UTSA.[5] The UTSA, along with common law, the Restatement of Torts, the Restatement of Unfair Competition and the Lanham Act, largely govern trade secret protections.[6] With the recent enactment of The Defend Trade Secrets Act of 2016 (DTSA), intellectual property protections have now broadened in scope. The DTSA amends the previously enacted Economic Espionage Act, and provides for a new federal cause of action for trade secret misappropriation.

Pursuant to the DTSA, a trade secret owner may bring a civil action related to a product or service used in, or intended to be used in, interstate or foreign commerce.[7] A claim under the DTSA must be brought within three years after the date the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. Among other things, the DTSA allows for:

- Civil seizure of property upon a proper showing when necessary to prevent the propagation or dissemination of a trade secret.
- Immunity from liability for the disclosure of a trade secret when made to the government for the purpose of reporting or investigating a suspected violation of the law and anti-retaliation whistleblower protections for reporting employees. Important to note, under the DTSA, employees include individuals working as contractors or consultants.
- Remedies in the form of an injunction or an award of damages, including damages for actual loss; unjust enrichment, not included in the actual loss; or in some cases, in lieu of damages, the imposition of liability for a reasonable royalty for the unauthorized use or disclosure of the trade secret. Where the misappropriation of the trade secret is willful or malicious, exemplary damages are available up to two times the amount of damages as well as reasonable attorney fees to the prevailing party.
- Remedies against organizations that knowingly convert trade secret with intent, including a fine of the greater of $5 million or three times the value of the stolen trade secret to the organization including the research and design expenses and other costs.

The DTSA does not preempt state law, and as such, trade secret owners can choose state and/or federal protection of their trade secrets.

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Pros and Cons of the DTSA

Here are five specific significant provisions of the DTSA:

1. The DTSA allows a Federal court to issue an order to provide for seizure of property necessary to preserve evidence or to prevent the propagation or dissemination of the trade secret. Such an order is only to be issued in "extraordinary" circumstances. It must be based on an ex parte application sworn by an affidavit or verified complaint. An ex parte applicant must show that a temporary restraining order would be inadequate, immediate and irreparable harm would occur without the order, likelihood of success on the merits of the case, can describe the items to be seized with reasonable particularity, and must show absent the order the items would be destroyed, moved, hidden or otherwise made inaccessible. Any items seized shall be taken into the possession of the court.

   As the DTSA is newly enacted there has yet to be judicial interpretation of extraordinary circumstances. However, as the seizure order can be entered ex parte, your client will not even have a chance for redress until the seizure has already occurred. Moreover, as the items are to be taken into the possession of the court, such a seizure could be challenged as a governmental taking, which requires the payment of compensation.

2. Disclosures of trade secrets are immune from the act if they are disclosed in confidence to a federal, state, or local government official, or to an attorney, for the purpose of reporting or investigating a suspected violation of the law, or in a complaint or other document filed under seal in a judicial proceeding.

   While this is common sense that a court or attorney would need to know the specifics of a trade secret before accessing the viability of a claim or entering an order, the requirement to file documents in judicial proceedings under seal also undercuts the public's right to access court documents. Moreover, it may be difficult for a court to issue an opinion providing sufficient guidance for other parties if the specific facts of the claim cannot be published.

3. There is also a related whistleblower exception. An individual can disclose the trade secret to an attorney and file with the court if filed under seal in a retaliatory firing suit for reporting a suspected violation of law.

4. Possession of trade secret information is not actionable if it is obtained through lawful means. A party can obtain trade secret material if it is done through reverse engineering, independent derivation, or any other lawful means of acquisition. Thus, the DTSA does not add any additional protections to the scope of trade secrets, it merely provides an additional tool to enforce trade secret rights.

5. Because there is no specific enumerated constitutional right to trade secret protection, the DTSA was enacted under the commerce clause. Thus, the trade secret at issue must be used or intended to be used in interstate or foreign commerce. A particular note should be made that the use in commerce must be related to the trade secret itself, not the intended disclosure.

Recommendations for Navigating the DTSA

We can offer several recommendations regarding how employers can position themselves to handle DTSA.

- Employers should have a system in place to verify the source of an employee's ideas. This will help with establishing trade secret ownership rights to bring a cause of action.
- Implement measures to keep track of the value of your trade secret, including research and design expenses and other costs so that it will be easier to demonstrate damages in the event of misappropriation.
- Be diligent in monitoring trade secrets as the statute of limitations to bring a claim of misappropriation is three years from when misappropriation is discovered or should have been discovered by the exercise of reasonable diligence.
- Establish a reporting policy for employees who suspect a violation of the law. In order for an employer to obtain exemplary damages or attorney fees against an employee who has misappropriated trade secrets, the DTSA requires that the employer give proper notice of the immunity provision of the DTSA and provide a proper reporting policy for a suspected violation of the law.

As you can see the DTSA will broadly affect companies' intellectual property rights and obligations. Hopefully, this article will give you an understanding of the impact of the DTSA on companies, as innovators, manufacturers and employers.

1 *See* www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm.

2 *Id.*

3 *See* www.uniformlaws.org/ActSummary.aspx?title=Trade%20Secrets%20Act.

4 *Id.*

5 *See* www.uniformlaws.org/LegislativeFactSheet.aspx?title=Trade%20Secrets%20Act.

6 *See* Elizabeth A. Rowe & Sharon K. Sandeen, *Cases and Materials on Trade Secret Law 39* (2012).

7 The Defend Trade Secrets Act of 2016, 18 USCS 1832, *et seq.*

Landlords and Cannabis Clients: How to Handle Commercial Leases with Green Tenants

On October 27, 1970, President Richard Nixon signed the Controlled Substances Act into law.[1] The act restricted access to various drugs through rankings based on the drug's potential for abuse, accepted medical use and dependence potential. The worst offenders were assigned to Schedule 1 – high potential for abuse, no currently accepted medical use and no accepted safe use under medical supervision.

Marijuana was and remains a Schedule 1 drug.[2]

The Rise of "Legal" Cannabis

Over 25 years later, California passed the Compassionate Use Act to allow the use of medical marijuana.[3] Twenty-four other states and the District of Columbia have since legalized marijuana for medical or recreational use. Despite state level legalization, it remains illegal at a federal level for landlords to knowingly lease or manage space for manufacturing or distributing marijuana. Landlords violating the Controlled Substances Act face criminal penalties including a 20-year imprisonment, a fine of $2 million and forfeiture of the landlord's real estate.[4]

On October 19, 2009, Deputy Attorney General David W. Ogden of the United States Department of Justice released a memorandum addressing federal prosecution in states permitting medical marijuana (the "Ogden Memo").[5] The Ogden Memo encouraged selective marijuana prosecution under the Controlled Substances Act, stating:

> [t]he prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.

The Ogden Memo reassured landlords that although marijuana remained illegal at the federal level, the Department of Justice was unlikely to prosecute those complying with state medical marijuana laws. The Ogden Memo did not, however, legalize marijuana nor represent an official policy of the Department of Justice – it merely encouraged selective enforcement. The Department of Justice remained empowered to prosecute landlords leasing space to marijuana dispensaries, as shown in Marin Alliance for Med. Marijuana v. Holder.[6]

In Marin Alliance, landlords were leasing space to marijuana dispensaries operating in compliance with state marijuana law. The U.S. Attorney's Office demanded the landlords take steps to discontinue their tenants' sale of marijuana, threatening criminal prosecution, fines, imprisonment and forfeiture of the landlord's real estate. The landlords sought to enjoin the U.S. Attorney's Office from prosecuting based on several theories of law, citing the Ogden Memo. The Marin Alliance court found for the U.S. Attorney's Office and reaffirmed that marijuana remained illegal at the federal level despite state law to the contrary and that the Ogden Memo did not legalize marijuana, was not a statement of official policy, and was mere guidance for the Department of Justice.

Even though the Department of Justice can still prosecute landlords leasing to state sanctioned marijuana dispensaries, landlords remain eager to access the

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now estimated $7.1 billion United States "legal" marijuana market.[7] The conflicting relationship between state and federal law, state regulations and unusual working conditions of green tenants make obtaining a lawyer all that more critical when creating commercial marijuana leases. Lawyers may be reluctant to take on these cases, however, due to ethical concerns.

A Lawyer's Quandary

Rule 1.2(d) of the Model Rules of Professional Conduct states:

> [a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.[8]

Is it a breach of ethics if a lawyer advises or assists a landlord in knowingly leasing space to a marijuana dispensary operating illegally under federal law but legally under state law? Different ethics committees have concluded differently. The New Jersey Advisory Committee on Professional Ethics narrowly concluded that lawyers may represent clients whose businesses involve growing marijuana pursuant to the New Jersey Compassionate Use Medical Marijuana Act, stating that public policy encourages lawyers to provide legal services to businesses navigating complex regulatory framework.[9]

The Professional Ethics Committee of the Connecticut Bar Association, however, found that although Connecticut may permit medical marijuana use, such behavior remains a federal crime and the rules of professional conduct do not distinguish between which crimes are enforced. As such, the Professional Ethics Committee concluded lawyers may only advise clients of the requirements of the Connecticut Palliative Use of Marijuana Act and are prohibited from conduct violating federal law, which includes representing marijuana clients before state licensing committees.[10]

Many states have addressed the lawyer's dilemma through amending existing state rules of professional conduct. In Colorado, the state supreme court amended the Colorado Rules of Professional Conduct to explicitly allow lawyers to counsel clients on state marijuana laws as well as assist clients in conduct the lawyer reasonably believes is permitted under the state and local marijuana laws.[11]

Conflicting ethical guidelines, opinions and laws prohibit a simple answer for whether lawyers can help landlords lease to green commercial tenants. Lawyers must conduct a case-by-case analysis, review their state rules of professional conduct, and search for relevant ethics opinions. Assuming the lawyer may assist the landlord, a green commercial lease should address several important considerations.

Protecting the Landlord

The Department of Justice can still prosecute the landlord under the Controlled Substances Act for leasing to state-sanctioned marijuana dispensaries, even though the Department has mostly refrained from prosecuting landlords and tenants complying with state marijuana laws.

As such, the green lease must include generous landlord termination provisions. The scope of permissible use should be narrowly drawn with no cure period for defaults to ensure strict compliance with applicable state marijuana laws. This helps avoid federal scrutiny and provides easy termination for noncompliance. The ideal green lease also provides non-curable defaults for federal intervention, changes in federal enforcement policy, forfeiture threats, and federal enforcement actions. This gives the landlord a better negotiating position with the Department of Justice should the need arise.

Current federal marijuana law makes strict compliance with all applicable federal law impossible for green tenants. The lease should address this by including provisions requiring strict compliance with all state law and relevant federal law to the fullest extent possible. Special indemnification provisions should also be included for landlord's losses relating to the tenant's business including a taking of the landlord's property, criminal prosecution, and damage as a result of break-ins, robberies and burglaries. Marijuana dispensaries are largely cash businesses, which can attract unscrupulous attention. Finally, the lease should provide no tenant allowance, require that the tenant install all tenant improvements, and require that the tenant remove any improvements at the tenant's sole expense upon landlord's request at the lease's expiration. This helps distance the landlord from the green tenant's business activities.

Despite the risks, commercial marijuana leases can be a lucrative endeavor. Landlords and attorneys must ensure they are sufficiently protected, however, before adventuring into the new, green economy. P

1 Controlled Substances Act, 21 U.S.C. §§ 801-971 (2012).

2 Id. § 812(c)(10), (d)(1) (2012).

3 Compassionate Use Act of 1996, Cal. Health & Safety Code § 11362.5 (Deering 2016).

4 21 U.S.C. §§ 848(a), 853(a), and 856(a) (2012).

5 David W. Ogden, Memorandum for Selected United States Attorneys on Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana, UNITED STATES DEPT. OF JUSTICE (Oct. 19, 2009), www.justice.gov/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states (last visited June 20, 2016).

6 Marin Alliance for Med. Marijuana v. Holder, 866 F. Supp. 2d 1142, 1152 (N.D. Cal. 2011).

7 Katie Sola, Legal U.S. Marijuana Market Will Grow To $7.1 Billion in 2016: Report, FORBES MAGAZINE (Apr. 19, 2016), www.forbes.com/sites/katiesola/2016/04/19/legal-u-s-marijuana-market-will-grow-to-7-1-billion-in-2016-report/#4b1241bf568d (last visited June 20, 2016).

8 MODEL RULES OF PROF'L CONDUCT r. 1.2(d) (Am. Bar Ass'n 2016).

9 N.J. Advisory Comm. on Prof'l Ethics, Proposed Amendment To Rule Of Professional Responsibility To Counsel And Assist Clients With Regard to New Jersey Medical Marijuana Laws (May 19, 2016), www.judiciary.state.nj.us/notices/2016/n160519a.pdf (last visited June 20, 2016).

10 Conn. Bar Ass'n. Prof'l Ethics Comm., Informal Op. 2013-02 (2013).

11 Colo. Rules of Prof'l Conduct r.1.2 (Colorado Supreme Court 2014).

MSP Private Causes of Action: Law Firms and Lawyers Beware

The recent decision of *Humana Health Ins. Co. v. Paris Bank, LLP*, —F.Supp. 3d—, 2016 WL 274597 (E.D. Va. 2016) has confirmed that law firms and lawyers alike are subject to private causes of action under the Medicare Secondary Payer Act (MSP) according to the Eastern District of Virginia. The underlying facts of the case show how plaintiff's attorneys and their firms can find themselves as defendants to a MSP private cause of action.

On October 11, 2013, an enrollee under Humana Insurance Company's (Humana) Medicare Advantage program was involved in a motor vehicle accident. Humana paid out a total of $191,612.09 in conditional payments for medical expenses related to the motor vehicle accident. The enrollee retained the services of the law firm of Paris Bank, LLP, and ultimately, Paris Bank, LLP, secured a total of $475,600 in payments from various insurers to resolve the personal injury claim. One or more of the settlement checks were issued to both Humana and the enrollee's law firm jointly. Although the law firm requested one of the carriers to issue a new settlement check in the law firm's name only, the carrier refused to do so. According to the facts recited by the court, the law firm deposited the subject check without Humana's endorsement. The decision also notes that Humana alleged that settlement proceeds were subsequently disbursed to the enrollee by the defendant law firm.

Subsequent to the settlement, Humana advised the enrollee that she owed $191,612.09 to reimburse the conditional payments made for the medical expenses. On behalf of the enrollee, a lawyer from Paris Bank, LLP, sought a waiver of this amount and, in support, provided correspondence that apparently contained confirmation from the Centers for Medicare and Medicaid Services (CMS) that the Enrollee did not have any obligation under Medicare Part A or Part B.

Humana ultimately denied the request for waiver of the amount and brought a private cause of action under 42 U.S.C. §1395y(b)(3)(a) against the enrollee's lawyer and his law firm. The law firm and lawyer moved to dismiss arguing that no private cause of action existed under the MSP that such a cause of action would not be applicable to the lawyer and his law firm. The Federal Court in the Eastern District of Virginia denied the motion and stated clearly that an MSP private cause of action could be brought against the lawyer and his law firm.

The Eastern District of Virginia in its ruling found persuasive the decision from the Third Circuit Court of Appeals In re: *Avanida Marketing, Sales Practices and Products Liability Litigation*, 685 F.3d 343 (3d Cir. 2012). In that decision, the Third Circuit found that a private cause of action was created under 42 U.S.C. §1395y(b)(3)(a) to recover secondary payer conditional payments. Depending on your viewpoint, this could be considered either an expansion or a confirmation of the scope of the MSP law first passed in 1980. As described by the Eastern District of Virginia *Humana* case, the enacted MSP law coordinated the payment of benefits between primary and secondary payers. Under this framework, worker's compensation, liability and no fault insurance were primary payers and Medicare secondary. If Medicare made conditional payments, it could seek payments from primary payers. The *Humana* decision arguably lumps law firms into the group of "primary payers" who may be subject to a private MSP action to recover secondary payer conditional payments.

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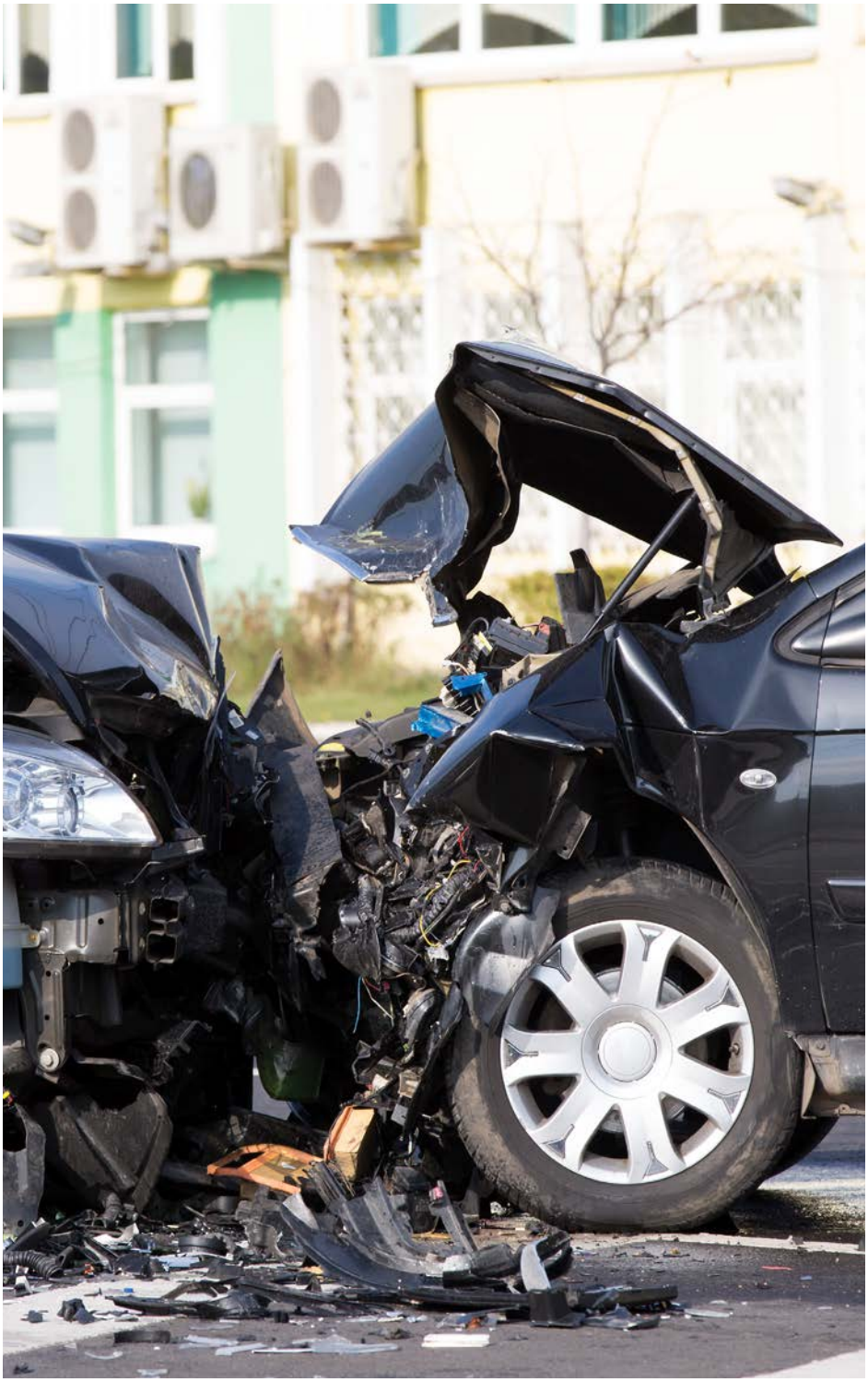


It should be noted that at the time of submitting this article, there had not been any additional rulings from the Eastern District of Virginia in the *Humana* case. The *Humana* decision procedurally involves a motion to dismiss, and it is not clear as to whether additional defenses may defeat the MSP action during the course of the litigation. Nevertheless, the Eastern District of Virginia has allowed the MSP private cause of action to continue against the lawyer and the law firm through its recent decision.

There are obviously several important take-aways from the facts in *Humana* as reported in the Eastern District of Virginia opinion. First, the apparent cashing of settlement check(s) without the endorsement of the secondary conditional payment payer and subsequent disbursement invites a serious risk of adverse action by the conditional payment payer.

Second, the subject inquiry to CMS by the defendant law firm was, at least as far as the secondary payer was concerned, not comprehensive enough. Apparently, the defendant law firm's communications to determine the need for potential reimbursement were as to Medicare Parts A and B only and did not apparently address Part C under which the conditional payments were actually made. This apparent miscommunication highlights the importance of clear and comprehensive correspondence and documentation with regard to *any* communications with secondary payer organizations. The message is clear: MSP private causes of action are going to become more prevalent as secondary payers seek reimbursement of conditional medical payments. Moreover, these actions include a remedy of double damages as provided by 42 U.S.C. §1395y(b)(3)(A).

As for defendants engaged in personal injury litigation in which a MSP issue may arise, an initial reaction may be to insist on indemnification by the plaintiff's attorney and/or law firm in order to protect against MSP actions subsequent to settlement. However, the overwhelming majority of state ethics opinions hold that requiring a plaintiff's attorney to personally indemnify a defendant through a settlement agreement is unethical. See, for reference, ABA Model Rules 1.8(e), 1.7(a) and 8.4(a). Readers are encouraged to consult their own jurisdictions' opinions on this ethical issue. In summary, the *Humana* decision appears to be a precursor to additional opinions on the issue of MSP private causes of action against law firms and lawyers in addition to "traditional" primary payers. P

Overcoming Statistical Overload: Establishing the First Steps of a Cybersecurity Program

In the cybersecurity realm, businesses are frequently confronted with a confusing array of seemingly solid (and sometimes contradictory) statistics. For example, the Identity Theft Resource Center (ITRC) Data Breach report states that there were 780 publicized data breaches in 2015. On the other hand, the 2016 Verizon Data Breach Investigations Report considers a worldwide 2015 data set of 100,000 data "incidents," of which 3,141 were "confirmed data breaches" with the majority of the breaches occurring in the U.S.

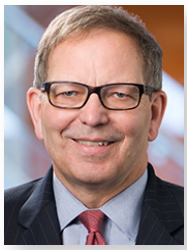
An IBM/Ponemon Institute report (based on 383 companies in 12 countries) states that the average global cost of each lost or stolen record was $158 and that data breaches cost the most in the U.S. ($221). Various reports and surveys also state that 71 percent of respondents' networks were breached in 2014; 52 percent of respondents believed a "successful attack" was likely in 2015; that 74 percent of Chief Information Security Officers are concerned about employees stealing sensitive company information; and that only 38 percent of global organizations claim they are prepared to handle a sophisticated cyberattack.

Which of these statistics are trustworthy? Even more fundamentally, are any statistics reliable in the rapidly changing cybersecurity space? And, if no statistics are absolutely reliable, does this mean that businesses are justified in not acting to prevent cybersecurity incidents until there is more solid and consistent evidence?

Despite the sometimes contradictory nature of statistics, it would be a mistake to ignore cybersecurity. There are, of course, statistics to support that view as well! A study conducted by ISACA – a leading security organization – showed that 82 percent of security professionals stated that their boards of directors were very concerned about cybersecurity. But notwithstanding these concerns (which are echoed in numerous surveys regarding cybersecurity awareness), there is also said to be a gap between general awareness of the problem and implementation of solutions, particularly on the part of small to medium size businesses (SMBs), who frequently are concerned about the cost of such implementation. Cisco reported in 2015 that a smaller percentage (29 percent) of SMBs were using standard patching and configuration tools for preventing security breaches than had done so in the prior year (39 percent) – a troubling statistic given the increase in cybersecurity attacks. Moreover, the Cisco report also found that SMBs often do not have an executive in place that is responsible for security and that "nearly one-quarter do not believe their businesses are high-value targets for online criminals."

Although SMBs may not see themselves as targets, as Cisco states, they "may not realize that their own vulnerability translates to risks for larger enterprise customers and their networks." Indeed, SMBs may be the weakest link in protecting proprietary information of their clients, as exemplified by the fact that the massive Target breach was supposedly effected through an HVAC contractor.

A consistent message in the myriad of surveys and reports cited above is that cybersecurity threats continue to grow not only in number but in extent. Any business that has data of its own, stores or processes the data of others, or provides an access point to the data of a third party, is a potential target for hacking and potential extortion. The reasons for this are clear. As the 2016 Verizon Data Breach Investigations Report indicates, 89 percent of phishing attacks are perpetrated by organized crime syndicates (often located abroad), who have the time, motivation



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and patience to exploit any vulnerability that may lead to financial gain. Moreover, the targets of these perpetrators are the highly fallible humans who are prompted to open e-mails or respond to the supposed instruction of an executive to wire money to an overseas bank account. A recent Experian/Ponemon Institute survey found that 66 percent of respondents believed that employees are the weakest link in creating strong security and that 55 percent suffered a security incident due to a malicious or negligent employee.

Perfect cybersecurity should not be the enemy of good security based on incremental (and frequently relatively inexpensive) steps. Rather than being seen as exotic (or as the purview solely of the largest enterprises), cybersecurity protection for businesses should be as fundamental as protecting against fire, water or wind for the simple reason that data in the wrong hands can be as destructive as any of these elements.

Understanding that perfect security is unachievable, even for the largest enterprises, what basic steps should a business take?

- As a good first step, a business should analyze the nature of the specific risks it confronts. If it has not already done so, it should conduct an inventory of key data assets and analyze existing restrictions placed on access to such data by its personnel.
- A business should put in place basic written procedures and policies regarding use of computer systems and data. Although these policies need not be elaborate, they must realistically reflect the risk environment in which the business operates. Key policies and procedures may include: controlling access to computer systems, password controls, procedures for updating software, implementing protections against internal threats and monitoring access to sensitive or valuable information.
- A business should conduct cybersecurity and privacy awareness for all personnel, including executives. All employees should be made aware of the potential attacks, including ransomware, phishing attacks, and attempts to steal key data or extort or wrongfully transfer money, and also of the ways that such attacks may be prevented.
- An enterprise should purchase cyber insurance coverage appropriate for the risks it faces. Because cybersecurity insurance is a relatively new product and policy terms vary, a business should consult with a trusted advisor, such as an attorney or insurance broker, as to what coverage is best for it.
- Finally, all businesses should put in place technical protective measures to help guard against its own specific risks, such as storing credit card, health or personal data. In addition to traditional tools, such as firewalls and anti-virus software, businesses should consider implementing encryption, filtering e-mails for phishing and extortion threats, and implementing measures to guard against ransomware.

Involving counsel in many of these activities is advisable. Lawyers are well equipped to help analyze cybersecurity problems in the context of the myriad of applicable laws, regulations and best practices. Although many businesses will likely find it necessary to consult technical personnel, including a company's own IT department or outside consultants, trusted legal counsel can help ensure that the technical advice provided by such personnel is presented to executives in a manner that will maximize its impact. Involving lawyers also helps ensure that executives will see cybersecurity not as a technical issue best left to IT, but as a part of an overall risk management strategy.

Involving lawyers in cybersecurity matters also provides attorney-client privilege protection for sensitive issues, such as the location and protection of personal and proprietary data, gaps in security and privacy protection, and the vulnerability to outside attacks, as well as communications with outside consultants. Because of the complex array of global regulatory and legal requirements, counsel should be engaged if a business must remediate a data breach, respond to a regulatory inquiry, or transfer data internationally.

Although, as Mark Twain stated, "There are three kind of lies: lies, damned lies, and statistics," enterprises of all size should not let the wide array of cybersecurity statistics prevent them from taking the necessary and often relatively inexpensive first steps needed to protect against data incidents and breaches. P

Divorce and How It May Impact Your Business

Family law touches on many aspects of other law practices including tax, employee benefits, corporations, partnerships, bankruptcy, trusts and estates and even animal law. Family lawyers frequently divide assets including retirement assets, intellectual property, lottery or gambling winnings, real estate, employee benefits, annuities, life insurance, brokerage accounts, professional practices and even licenses depending on the laws of your state. Given the percentage of marriages which end in divorce, let this article be a warning to everyone to consider how a potential divorce could impact your business.

Divorce and Personal Injury Law

You should be aware of your state's laws with regards to whether proceeds from lawsuits and/or workman's compensation are marital property or sole property.

The first question to consider is: when did the injury occur? Did it occur prior to the marriage, during the marriage or after the divorce was initiated? In some states, whether any proceeds from a lawsuit are marital or sole property depends on the accrual date. Other states look at the distribution date of the lawsuit.

Next, what kinds of money damages do the lawsuit proceeds include? For example, pain and suffering awards are typically individual. On the other hand, loss of consortium, physical damage to property and lost wages or workmen's compensation would normally be considered community property or part of the marital estate. However, each state is different and you must be aware of your state's laws in this regard. Some states consider the entire award as joint property, but then may award an unequal distribution in light of the facts and circumstances of the personal injury case. As the attorney, failure to specify the allocation of the types of money damages may cause the entire award to be subject to equitable distribution in a divorce. Additionally, in some states, if the funds are commingled, they will not be considered separate property. Each state has different laws regarding commingling, tracing assets, and separate or community property so it is essential to either become competent in these considerations or consult a lawyer that is well versed in family law.

Divorce and Business Law

Family-owned businesses contribute nearly 70 percent of the world's gross domestic product. Family businesses represent the majority of all businesses and employ nearly half of the nation's workforce. Family businesses necessarily involve family relationships which can be affected by divorce. When a business is co-owned by a married couple, divorce normally involves an exit from both the relationship and the business by one party or it may cause the closing of the business entirely. Even if the divorce is not between owners of the company, but rather an owner of the company and his or her spouse, the business will likely be affected. The distraction and the physical, psychological and emotional strain in proceeding through a divorce may cause the business to decline. The business may suffer simply because of the financial and practical burdens of submitting to a comprehensive business evaluation. Full and complete production of evidence may be a time-consuming and expensive endeavor. It is crucial that interference is minimized in order to safeguard the stability of the business.

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Corrie Sirkin

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From the inception of a business, the parties thereto should be contemplating a potential divorce. Divorce planning for businesses is essential. Initial formation documents such as shareholder operating or partnership agreements may contain restrictions and/or waivers that protect the business in the event of a divorce. Parties can contract regarding whether business assets stay in the business in the event of a divorce via a right of repurchase. Shareholder agreements can provide that business assets stay within the family. Trust documents can be used to give family members a stake in the family business without surrendering control.

The allocation of control and ownership rights in the event of a divorce can also be drafted so as to protect the corporation itself. It is necessary for lawyers to be aware of divorce laws and business laws as a court must apply equitable principles in a divorce and these considerations may render imbalanced agreements void. Additionally, minority shareholders under business law can apply to the court for protections and controlling shareholders may owe fiduciary duties to minority shareholders. The results for a business which failed to plan in case of a divorce could be disastrous. The business could experience a decline and if there are insufficient assets, it could be bankrupted or may need to be sold. Moreover, divorce attorneys and business attorneys must recognize that liquidated businesses may have significantly less immediate value than the potential income continuing cash flow. The risks and rewards of delayed gratification through a longer-term payout must be considered.

For a pre-existing business, prenuptial agreements for owners entering into marriage are essential. Prenuptial agreements should be drafted to protect the business, any increases in value, and any changes in form. The client may consider obtaining a life insurance policy, in a similar value to the business, with his spouse as beneficiary and owner to assuage any fears that his or her spouse would not be provided for in the case of an untimely death.

Given the high divorce rate in the United States, a significant number of people will divorce every year and the implications can be widespread. P

In-House Social Media Policy and Ethical Concerns: A Litigation Primer

In-house counsel – like outside litigation counsel – need to comply with their jurisdiction's own ethics rules. However, as they relate to social media communications, how to comply with them in the litigation context is not always self-evident. Much has been written on social media policy and ethics as it relates to litigators, but there is far less when it comes to in-house counsel's ethical obligations in the litigation context.

The first question in-house counsel needs to ask is whether his or her company utilizes social media in any way and, if so, does the company have an effective corporate social media policy and/or handbook. An entity's corporate policy, however, is appropriately informed by whether the company utilizes social media through company-sanctioned social media platforms, as well as whether it permit its employees to use their own social media accounts to promote the company's agenda or to engage in business-related communications.

Risks of Having No Corporate Social Media Policy

If a company formally or informally condones the use of communications by its employees over social media to further company objectives, three initial concerns are implicated. First, a company may be found by a court to be required to preserve social media communications of its "non-party" employees in litigation. A court's finding of such a duty and the concomitant failure to issue a "litigation hold" to preserve same, could have disastrous implications in a litigation such as fact preclusion, the issuance of a negative inference at trial or significant monetary sanctions. Second, government regulators, for instance, in the securities and food and drug areas, may hold the company responsible for employee social media communications that violate law. Third, a formal social media policy, for instance, would assist a company in

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addressing a lawsuit commenced against the employee, as well as the company, for defamation over social media; in prosecuting or defending a trade secret or tortious interference litigation; or in dealing with a breach of contract action. The above concerns highlight the need for even a small company to have a social media policy, especially if the company is concerned with litigation or simply may need to monitor employee social media communications for employment and human resources purposes.

Litigation Concerns

In-house counsel need to assume that competitors of his or her company will be monitoring all of its social media, as well as the social media of its employees, to the extent same is "public." Such review is even more problematic for in-house counsel where a company may soon be in or actually is in litigation. Counsel need to be aware that software exists which can "mine" such social media communications and posts, which information then can be used affirmatively or defensively, allowing in-house counsel to appropriate proper legal advice to the company. In-house counsel thus need to be vigilant when educating management and employees about communicating over social media. When appropriate, in-house counsel should consider some type of internal monitoring or hiring an outside professional to perform such monitoring. In-house counsel also should be aware that, while there is some debate among legal ethicists, currently there is no ethical prohibition to advising an employee to consider increasing the security setting on his or her social media account. The touchstone in the event of the prospect of litigation is to ensure that social media communications are appropriately preserved, and the precise form in which they should be preserved needs to be addressed with litigation counsel.

Investigations

In-house counsel, before they consult with outside litigation counsel, naturally like to conduct some of their own investigation of a problem in order to get a feel for the issues. That generally includes doing some investigatory research of relevant social media posts. However, the ethical rules prohibiting litigation counsel from engaging in deception when performing an investigation applies equally to in-house counsel. In-house counsel, of course, may view the "*public*" portion of a person's social media profile or that person's "*public*" posts, even if such person is represented by counsel, subject to the potential following exception. Because certain social media networks may send an automatic message to the person whose account is being viewed which identifies the person viewing the account, as well as other information about such person, such communication could be construed as improperly communicating with a party in litigation if represented. Obviously, in-house counsel may not contact a represented person in an attempt to seek to review the "*restricted*" portion of that person's social media profile unless an express authorization has been furnished by the person's counsel. It also goes without saying, as it relates to viewing a person's social media account, in-house counsel shall not order or direct his or her agent to engage in conduct which he or she is not ethically permitted to do.

In-house counsel, however, may request permission to view the "*restricted*" portion of an unrepresented person's social media website or profile. However, depending on the state, for instance, in-house counsel in so doing may be ethically required to disclose her full name and profile, occupation as an attorney, the company in-house works for, and the purpose for making or engaging in such communication. In-house counsel may not create a false profile in order to mask her identity. Lastly, if the person who has been communicated with, in order to perhaps better understand who he or she is responding to, requests additional information from in-house counsel in response to such request which sought permission to view the person's social media profile, in-house counsel must accurately provide the information requested by the person or withdraw her request for access.

In an investigation, in-house counsel may review the contents of the "*restricted*" portion of the social media profile or "*restricted*" posts of a represented person that was provided to counsel by, perhaps, a fellow employee. However, depending on the jurisdiction, that only may be permissible as long as in-house counsel did not cause or assist the employee to: (i) inappropriately obtain "*private*" information from the represented employee; (ii) invite the represented person to take action without the advice of his or her lawyer; or (iii) otherwise overreach with respect to the represented employee.

Reviewing Perspective Employee's and Hired Employee's Social Media Posts

In-house counsel and human resource executives often want to review a prospective employee's "*public*" social media posts before the person is hired. However, it should come as no surprise that if the employee is ultimately not hired, depending on the posts reviewed, such review could provide discovery material in a discrimination lawsuit. As such, in-house counsel needs to provide careful guidance to human resource professionals if such reviews are to be undertaken, and consideration must be given as to documenting what social media, in fact, was actually reviewed. Further, with respect to prospective and current employees, requesting their social media passwords or usernames in order to examine their "*private*" posts is fraught will peril. In-house counsel need to first speak with outside counsel in each state where the company operates to determine whether there is legislation proscribing such requests made to perspective or current employees. In addition to the numerous states which have already passed legislation addressing what may be asked of such individuals, in 2016 alone, legislation has been introduced or is pending in at least 14 states and it has been passed in Virginia addressing this specific issue. Also, as it relates to students, ranging from primary school to college age students, outside counsel need to be consulted as specific laws proscribing what can asked exist throughout the United States.

What does all of this mean? In-house counsel must be vigilant in attempting to manage their company's social media communication in our litigious world, but, in doing so, they need to be careful to ensure that lurking, but not oft appreciated, ethical rules are properly adhered to. P

Competitive Keyword Advertising: How Far Can You Go?

Google AdWords is an online advertising service. One of its features is sponsored links, advertisements triggered by keywords supplied by the advertiser. When a user conducts a Google search with a keyword, the search results display the sponsored link in addition to organic search results.

It is common for advertisers to use competitors' trademarks as keywords in Google AdWords. This means the advertiser's sponsored link ad will appear when someone searches for their competitor or their competitor's products/services. It makes sense from a marketing perspective to target competitors' potential customers – after all, they are searching for a product/service that the advertiser offers.

In this article we compare the legality of competitive keyword advertising in Australia, the United States and Europe.

Australia

Australian case law suggests that including a competitor's trademarks as keywords does not constitute trademark infringement.

In *Veda v Malouf* the court held that Malouf's use of the applicant's trademark, "Veda," in keywords was not trademark "use" (and hence trademark infringement) for the purposes of local trademark law for a number of reasons.[1] First, the advertiser, in this case Malouf, simply selected keywords and provided them to Google. This is not "use" that indicates a connection between the services provided by Malouf and the services provided by Veda. Second, keywords involving the word "Veda" may be used by anyone under the Google AdWords program, including Malouf's competitors. When a consumer searches using one of these keywords, sponsored links of Malouf's competitors may appear. They may also appear in organic search results. Third, the keywords are invisible to consumers. Justice Katzmann stated "the proposition that using words which are invisible and inaudible, indeed imperceptible, to consumers is using them as a trademark makes no sense." After all, keywords cannot be seen to distinguish the services of one trader from another when no one can see the keywords.

In *Veda*, the Court made a distinction between bidding on a competitor's trademarks as keywords and displaying a competitor's trademark in the text of the sponsored link advertisement. Whether this amounts to trademark infringement depends on the circumstances, and whether the use is considered to be descriptive (which is acceptable) or to be used as a badge of origin.

Europe

In *Google France v Louis Vuitton Malletier SA* the Court of Justice of the European Union (CJEU) stated that the test is whether the selection of trademarked keywords has an adverse effect on one of the functions of the trademark, such as the function of indicating the origin of the mark. This depends in particular on the manner in which that ad is presented.[2] A function of the trademark will be adversely affected where the ad does not enable an average internet user, or enables that user only with difficulty, to ascertain whether the goods or services referred to therein originate from the proprietor of the trademark or an undertaking economically connected to it or, on the contrary originate from a third party."[3] In other words, there will be infringement where the average consumer may wrongly think that the goods advertised are from the trademark proprietor.

In *Interflora v Marks & Spencer*,[4] both the plaintiff and defendant operated internet websites that took orders for the delivery of flowers. The plaintiff alleged that in using its trademark, "Interflora," and associated terms, the defendant was

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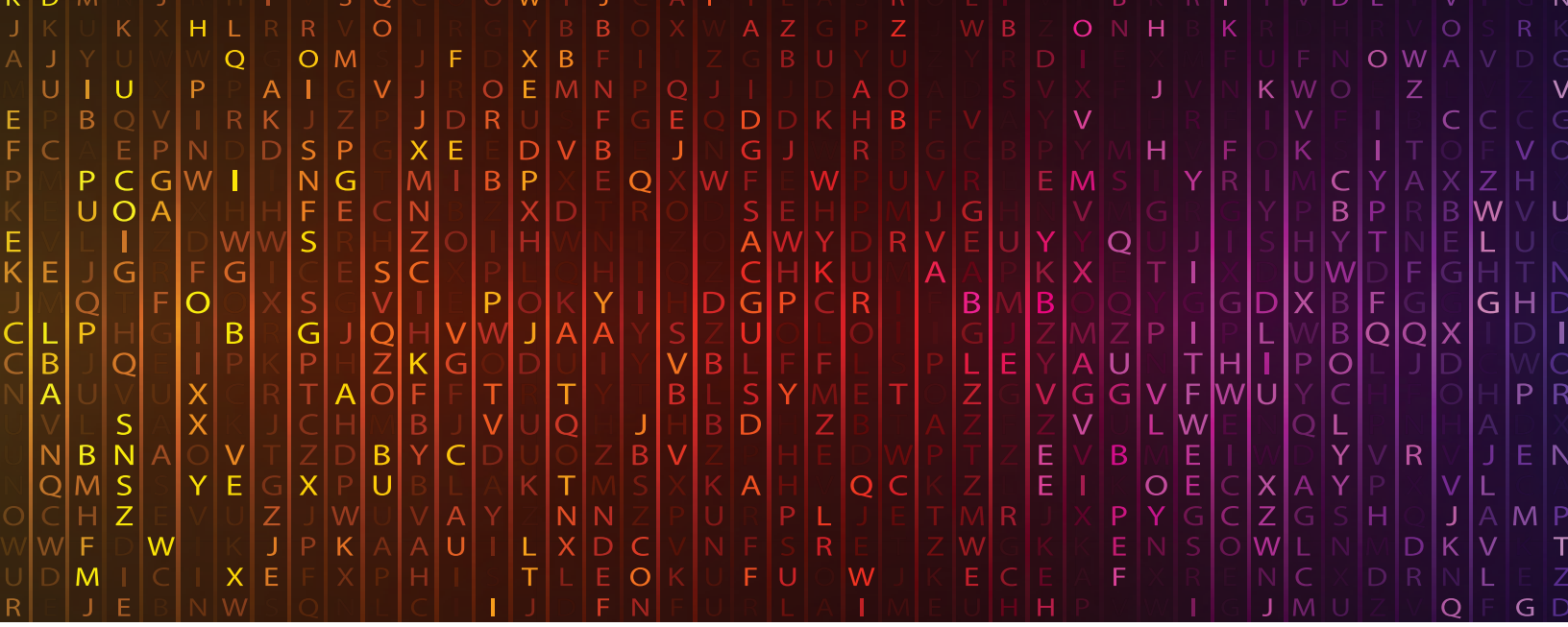

infringing Interflora's trademarks. The CJEU reiterated its stance in *Google France*. When further considered by the High Court of Justice, Justice Arnold found that Marks & Spencer had infringed Interflora's trademark. The court reasoned that the sponsored advertisements did not allow consumers to work out whether the services offered in those advertisements were from Interflora, a member of Interflora's network, or from an unrelated third party, and hence the origin function of Interflora's mark was adversely affected by the advertisements. This finding was influenced by how the Interflora trademark was used in business. Interflora used a network of independent florists. To a consumer who searched for Interflora, Marks & Spencer could have seemed part of the Interflora network.

United States

When it comes to whether considering keyword advertising trademark infringement cases, U.S. courts have been divided over a number of issues.

To be successful in a trademark infringement case, under the Lanham Act, 15 U.S.C. § 114, a party must prove: (1) the trademark is valid, (2) the accused infringer used the trademark in commerce in connection with the sale or advertising of goods or services (3) without permission and (4) the defendant's use of the mark is likely to cause confusion.[5] The accused infringer also must have used the trademark in commerce and in connection with the sale or advertising of goods or services. There was initially a divide among U.S. circuits as to whether using a competitor's trademark as a keyword constituted "use in commerce."[6] This has been resolved in the affirmative. Another area where courts have been divided is the fourth element – that is, whether the use is likely to cause confusion.

Despite lack of consensus in the area, the trend in the U.S. is that defendants win keyword advertising cases.[7] In fact, academic Eric Goldman has suggested that in the U.S. no trademark owner has won a competitive keyword advertising case since 2011.[8]

Courts in the Ninth Circuit have applied the *Sleekcraft* factors in order to determine whether a trademark use gives rise to a likelihood of confusion.[9]

In *Network Automation*, the United States Court of Appeals for the Ninth Circuit considered whether the defendant's use of the plaintiff's trademark was likely to cause confusion.[10] Network Automation used Advanced Systems Concept's "ActiveBatch" trademark as a keyword in Google AdWords and other keyword search marketing programs. The court ruled that this did not constitute trademark infringement. It found that the likelihood of confusion was insufficient to support injunctive relief. In reaching its conclusion, the court considered the *Sleekcraft* factors a flexible manner, emphasising the importance of doing so, particularly in the context of internet commerce.[11]

Conclusion

Europe, the U.S. and Australia have different approaches to competitive keyword advertising, but with similar results. In the age of the internet and global advertising, an international legal perspective is their key word. P

1 *Veda Advantage Limited v Malouf Group Enterprises Pty Limited* [2016] FCA 255.

2 Joined Cases C-236/08, C-237/08 and C-238/08, *Google France v Louis Vuitton Malletier SA* [2010] ECR I-02417, para 85.

3 Joined Cases C-236/08, C-237/08 and C-238/08, *Google France v Louis Vuitton Malletier SA* [2010] ECR I-02417, para 99.

4 *Interflora Inc v Marks &Spencer plc* [2011] ECR I-06963.

5 *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 117 (2004) and *Department of Parks & Recreation v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006).

6 Ashley Tan, *Google Adwords: Trademark Infringer or Trade Liberalizer?*,16 Mich. Telecomm. Tech. L. Rev. 473 (2010), *available at* http://www.mttlr.org/volsixteen/tan.pdf

7 See Eric Goldman, More Defendants Win Keyword Advertising Lawsuits, Techology & Marketing Law Blog, Feb. 11, 2015, blog.ericgoldman.org/archives/2015/02/more-defendants-win-keyword-advertising-lawsuits.htm.

8 Eric Goldman, *Regulation of Lawyers' Use of Competitive Keyword Advertising* (2016), Available at: http://digitalcommons.law.scu.edu/facpubs/880.

9 In *Sleekcraft* the Court analysed the likelihood of consumer source confusion between boats sold under the marks Sleekcraft and Slickcraft. The Court identified eight relevant factors for determining whether consumers would likely be confused by related goods. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979).

10 The ownership of the mark was not disputed and the lower court had correctly found the prerequisite "use in commerce" of the trademark.

11 In *Sleekcraft* the Court analysed the likelihood of consumer source confusion between boats sold under the marks Sleekcraft and Slickcraft. The Court identified eight relevant factors for determining whether consumers would likely be confused by related goods. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979).

Enforcement of Questionable Foreign Judgments in Australia

Recognition and enforcement of foreign judgments by domestic courts is well established in many countries and allows for judgment creditors to seek enforcement and recovery against overseas assets of judgment debtors.

However to what extent should civil judgments made by courts in countries who rank poorly in terms of bribery, corruption and judicial independence be treated the same as the judgments of domestic courts in countries who rank highly on these measures without further inquiry or examination by the domestic court?

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Australia's Statutory Regime

It may surprise many attorneys that Australian courts are mandated to register and allow the enforcement of monetary judgments of foreign courts listed in the Foreign Judgments Regulations 1992 (FJR) pursuant to the Foreign Judgments Act (FJA). Notably, countries whose courts are listed under the FJR and whose judgments are recognized under the stream-lined procedure include Malawi, Fiji, Papua New Guinea and Samoa.

Some listed countries rank poorly by leading bodies in terms of judicial independence and corruption.[1] Although there are grounds to apply to an Australian Court to set aside the registration of a foreign judgment from a listed country's courts on the basis of fraud and public policy, the existence of systemic corruption, without case-specific evidence of actual fraud or corrupt conduct, has been held to be insufficient to establish these grounds. This is the current and long standing state of the law.

While rating tables can only ever be a general guide and are open to criticism around research methodology etc, it has to be noted that the United States and Australia rate 86 percent and 96 percent respectively for control of corruption by Transparency International, whereas Dominica, Malawi, Samoa, Fiji and Papua New Guinea are rated 74 percent, 42 percent, 62 percent and 19 percent, respectively. Regardless of whether a listed country ranks poorly for corruption or the state of its judiciary, Australian courts will prima facie accept registration of judgments made by listed courts. Peculiarly, countries such as the United States, China and Thailand are not included in the FJR list and judgments must be enforced under common law.

For the purpose of demonstrating an application of the FJA to readers we have prepared a purely fictional case summary which has been drawn from a montage of circumstances in different cases known to the writer or in the writer's direct case experience.

Case Scenario

Imagine you have a client "Ben" who moves to a country which ranks low on the Transparency International index (Country A) to take up a contracting role with a locally based company. Ben through his contracting entity, leads the accounts department and is responsible for the company's payroll, and also for procurement. After two years, the company discovers there are discrepancies in the accounts. The company decides to commence proceedings against Ben in the courts of Country A without any conclusive evidence that Ben was at fault, and with evidence that is unlikely to give rise to a successful judgment in Australia's courts.

The plaintiff company brings the proceedings in part at least to appease shareholders with substantial links to government and the police in Country A, who are under political pressure to be seen to be "clamping down" on foreign companies. In the early stages of

the litigation, Ben has credible threats made against his and his family's life in relation to the proceedings. Although Ben maintains his innocence and intends to defend the litigation, he decides to leave Country A with his family.

Before the trial, the plaintiff in Country A applies to an Australian state court to freeze both Ben and his wife's assets in that state of Australia under the rules of that state's courts. As a result, Ben has limited funds to defend the action.

Ben attempts to defend the action through lawyers in Country A who file a defense, but is not allowed to plead his substantial and off-setting counterclaim which would be allowed in an Australian court. In addition, as technology is limited and unreliable, Ben faces significant hurdles giving proper instructions and evidentiary material to his lawyers in Country A, as there is no mechanism in Country A's laws to enable him to give evidence remotely, and he is unable to prove the threats on his life to the satisfaction of the Country A's court. The end result is that Country A's court issues final judgment against him without proper consideration of his defense.

The plaintiff company is now able to register this judgment in Australia and applies to the court in Australia for it to be registered under the FJA. As Ben cannot positively raise evidence of case-specific fraud or establish a ground to set aside the judgment, the Australian court is required to register the judgment and enforce it against his assets.

Establishing Fraud and Public Policy

Under the FJA, a party may seek to have the judgment set aside on the basis of, but not limited to, fraud and public policy.[2] However, establishing these grounds is difficult and rarely made out.[3]

The case law indicates that Australian courts will not set aside registration of a foreign judgment from a list country's Courts on the basis of public policy, merely because:

1. Australian courts would have decided the matter differently;
2. there are prima facie allegations of systemic corruption or fraud but the evidence falls short of being directly related to that particular case or judgment; or
3. no equivalent action or law exists in Australia.

Jurisdiction of Foreign Courts

Registration of a foreign judgment is not able to be set aside on the basis of lack of the foreign court's jurisdiction in circumstances where a judgment debtor voluntarily submitted to the foreign courts jurisdiction by engaging in the proceedings (beyond contesting the jurisdiction), resided in the foreign country at the time the proceedings commenced or where the transaction relating to the proceedings occurred through or at an office or place of business that the judgment debtor had in the country of that court.

Basis for the Foreign Judgments Act

The recognition of a foreign court's judgments and inclusion in the FJR list is based on the notion of substantial reciprocity, which is the key principle underpinning the legal mechanisms for global trade. The fact that the judgment by one of Australia's superior courts would also be recognized in a FJR listed country is the reciprocal benefit to Australia.

However, a significant and often unconsidered consequence of reciprocity, is that a country like Australia may not be getting a "fair trade" with countries who rate poorly on corruption indexes, whose governments do not or cannot adequately fund robust legal systems and the technology and infrastructure required to deliver substantive justice or procedural fairness or judicial consistency.

Forum Shopping

The current state of Australian law incentivises multinational corporations who perceive an advantage litigating in a foreign country against a party with Australian assets, to avoid what might be a higher degree of scrutiny or difficulty in the Australian courts, and then seek enforcement of those judgments in Australia against domestic assets.

From the outset of litigation, if not well before its commencement, plaintiffs and defendants require expert advice concerning both the court system in which the proceedings are commenced and the regime of the country in which the defendant has assets available for enforcement (in this article, Australia). The advice needs to address, among other issues, whether to submit to or oppose foreign jurisdiction, which defences to raise, when and in which jurisdiction to make any counterclaim as well as when and how to contest the registration of any judgment.

Recommendations for Law Reform

Australia's current foreign judgments enforcement regime is selective to Commonwealth countries and notably excludes Australia's top trading partners China, United States, Thailand and Indonesia. If Australia expects to grow global trade, it will need to widen the number of countries whose judgments are recognized. Doing so should require strict assessment of whether those country's courts offer minimum standards of procedural fairness and substantive justice as those concepts are understood, and protected, in Australian law.

Until substantial reform can be undertaken, the Australian government needs to update the regulations which list recognised Courts and judgments under the FJR.

Australia is actively involved in, and a supporter of the "judgments project" and the Special Commission created by the Hague Conference on International Public Law which seeks to develop an international treaty for universal recognition of civil and commercial foreign judgments. If Australia ratifies the treaty, Australia's laws will change significantly. P

1 www.transparency.org/country
www.globalintegrity.org
reports.weforum.org/global-competitiveness-report-2015-2016/

2 *Foreign Judgments Act 1991* (Cth) s 7

3 *Jenton Overseas Investment Pty Ltd v Townsing* [2008] V

Recognition and Enforcement of an International Judgment

Obtaining a judgment can be a challenging experience, and enforcing that judgment in a different jurisdiction can be even more so. The goalposts are slowly changing, with the legal landscape gradually coming into line with the commercial reality of multi-jurisdictional transactions.

EU – Simplified Enforcement

Enforcing a judgment between European Union (EU) member states is now a relatively straightforward process. Since January 2015, the Brussels Recast Regulation[1] has regulated the recognition and enforcement of judgments in civil and commercial matters between member states.

The Brussels Recast Regulation has simplified the enforcement process, which is to be welcomed by practitioners across European borders. A judgment creditor is no longer required to seek a declaration of enforceability of a European judgment. It now means that a judgment can be enforced in another member state of the EU as if it had been delivered in that state itself. Certain exceptions to enforcement understandably apply, including a refusal of recognition on the basis that the judgment would be manifestly contrary to that state's public policy.

The Brussels Recast Regulation introduced a significant change which will be of particular interest to clients dealing in cross-border transactions. The EU now recognizes that the parties to a contract have the right to subject their commercial agreement to the exclusive jurisdiction of a particular EU member state. Previous legislation required one party of the agreement to be EU domiciled. This has now been abolished. It means that the European Courts are now an open forum for international contractual disputes. Two non-EU parties can elect that a dispute between them will be governed by a particular EU member state's court.

In general terms, before seeking to recognize and enforce your judgment in another member state you should:

- Obtain an approved copy of the judgment;
- Prepare your standard certificate which is annexed to the Brussels Recast Regulation[2]; and
- Where necessary, obtain a translation of the judgment and the certificate.

The exact procedural process for recognizing and enforcing an EU judgment will be specific to each member state. For example in Ireland, the Brussels Recast Regulation has been implemented in a practical sense by the Rules of the Superior Courts.[3] It is therefore recommended that if your client instructs you to enforce a judgment in an EU jurisdiction, you contact your Primerus counterpart to ascertain exactly how that can be achieved.

To the U.S. and Beyond

The scope of this article does not permit me to go into detail on the various methods of enforcing non-EU judgments within the EU and so I will focus primarily on the newest cowboy in town – the Hague Convention on the Choice of Court Agreements[4].

Yes, you would be correct in thinking that this particular Hague Convention has been around for 11 years, but it only came into effect on October 1, 2015. Although signed by Mexico in 2007 and since then by the EU, the United States, Singapore and the Ukraine, it could only come into effect three months following the ratification by the second signatory. Therefore the ratification by the EU of the Convention in June 2015 paved the way for its enforceability in October of last year.

The most recent ratification of the Convention came on June 2, 2016, by Singapore, which signed up to the Hague Convention in March 2015.

The Hague Convention provides for greater autonomy for contracting parties in terms of choosing a court to govern a dispute arising from their agreement. It

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provides for a "choice of court clause" in business-to business agreements, something that is notably absent from common law methods of recognizing and enforcing a non-member state judgment. This will save time, effort and costs in disputing a jurisdictional issue before the substantial issue has even made an appearance in the court papers.

While a review of the application for recognition itself is permitted under the Convention, the enforcing contracting state is not entitled to review the merits of the judgment given by the court of origin. The enforcing state is bound by any findings of fact of the originating state. The Convention helpfully sets out a comprehensive list of documents required to be produced to the enforcing state as a prerequisite to the recognition application.[5] The Convention applies to exclusive choice of court agreements entered into after the Convention came into force in the contracting state and only where proceedings were instituted after the Convention came into force.

On a practical level, the recent ratification by Singapore will potentially make the country more attractive as an Asian jurisdictional hub for dispute resolution. It means that the courts of other contracting states will be obliged to recognize and enforce a Singapore judgment on that dispute.

Another practical relief for attorneys is that all documents delivered under the Convention are exempt from legalisation or apostilling. This has previously been an administrative and costly burden in the recognition and enforcement of foreign judgments under Common Law.

The Convention outlines the criteria to be discussed in any refusal of recognition of a judgment by a contracting state. These points should be considered carefully before seeking to rely on the Convention to enforce a judgment in another contracting state[6]. These considerations are similar to those under the Brussels Recast Regulation but are more expansive. Of particular note is the necessity to prove that the originating court documentation was notified to the defendant in sufficient time for them to arrange their defense.

If your client is seeking to enforce a judgment of a contracting state, it is advisable to seek local procedural advice in relation to the practical applicability of the Convention. While the general procedure has now been greatly simplified, there will be procedural intricacies of which only local counsel will be attuned.

Although the United States are a signatory, they have not yet ratified the Convention. If they were to do so, it would pave the way for a standardized enforcement between the EU and the U.S., which can only be welcomed by the commercial world at large.

1 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

2 http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215

3 http://www.courts.ie/rules.nsf/8652fb610b0b37a980256db700399507/1b52c339b0a20b5880256f240040cd44?OpenDocument

4 https://www.hcch.net/en/instruments/conventions/full-text/?cid=98

5 Article 13 of the Hague Convention on Choice of Court Agreements.

6 Article 9 of the Hague Convention on Choice of Court Agreements.

Changes to Contracts in European Public Procurement Law

The European Union adopted modernized public procurement rules on February 11, 2014, by Directive 2014/246 (the 2014 Directive). Of its key provisions, one should emphasize two very important changes:

1. clarification of the rules governing the assignment of contracts, and
2. changes to existing contracts, notably the introduction of rules allowing for changes that were contemplated from the outset or have become necessary in the course of the contract performance.

History of Contract Amendments

The statements of the judgment No. C-454/06, the famous Pressetext case, rendered by the court of justice of the European Union (ECJ), greatly influenced the evolution of the amendment of contracts. The ECJ established that if an amendment constitutes a "material" modification to the essential conditions of the initial contract, such amendment shall qualify as a new contract.

An amendment may be regarded as material (i) when it introduces conditions that, if they were part of the initial award procedure, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted; (ii) when it extends the scope of the contract significantly to cover services initially not encompassed and (iii) when the economic balance of the contract is changed in favor of the contractor in a manner which was not set forth in the terms of the initial contract. Pursuant to point 40 of the ECJ's decision, as a rule, a change in contractor is a material change triggering a new tender unless that substitution was provided for in the terms of the initial contract. It can also be interpreted that as a rule, the change in contractor triggers a new tender, but not always.

Still, the *Pressetext* case, as well as others including *Succhi di Frutti, Wall AG, Commission v Germany, Commission v Spain*, have given relatively little certainty to what "material" really means. There have been surprisingly few cases that have looked at this principle in any detail. For example, *Succhi di Frutti* established that there is no material change if the contract provides relevant detailed rules for the change, while *Wall AG* taught us that substituting a key subcontractor could constitute a material amendment.

New Regime

The good news is that under the 2014 Directive, there are new rules making it possible for modifications to be made without breaching the procurement rules. These changes derive from the *Pressetext* case law, but there are significant clarifications.

The new rules provide a safe harbor for modifications which are deemed to be "not substantial," and for which there is no obligation to re-tender. This includes modifications where the overall nature of the contract remains unchanged, the value of the modification is below the procurement threshold and:

- less than 10 percent of the initial contract value (for contracts or framework agreements for supplies or services); or
- less than 15 percent of the initial contract value (in the case of contracts or framework agreements for works).

It will be permissible to modify contracts and framework agreements without a new procurement in the following circumstances:

1. Where modifications or options are provided for in the initial procurement document and unequivocal review clauses (including price), provided that all the conditions are clear and the modifications and options do not change the overall nature of the contract.
2. For additional works, services or supplies by the original contractor that have become necessary, and which were not included in the contact, and where a change of contractor cannot be made for economic or technical reasons or

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would cause significant inconvenience or substantial duplication of cost, provided that any increase in price does not exceed 50 percent of the original contract value.

3. Where the need for modification has been brought about by unforeseeable circumstances, provided that the modification does not change the overall nature of the contract and any increase in price does not exceed 50 percent of the original contract value.

4. Where a contractor is replaced by a new one as a consequence of either: (i) an unequivocal review provision or option (see point 1); or (ii) there being a universal or partial successor of the original contractor as a result of a corporate restricting, merger or takeover, provided that the new contractor fulfils all the criteria for initial selection and there are no substantial modifications to the contract.

A modification that would require a new tender would be one that substantially changes the contract, including, (i) a modification that materially changes the character of the contract; or (ii) its scope; or (iii) changes which, if included, would have attracted different participants or potential candidates or might have resulted in the acceptance of an alternative tender; or (iv) where it provides for a new contractor, it is one that does not fulfill the conditions for the exclusion.

The new rules under the 2014 Directive apply to all tender procedures that began after February 26, 2015. Tender procedures that began before that date remain regulated by the previous Directive and the *Pressetext* case law.

The Hungarian Law

A new act, namely the Act CXLIII of 2015 on Public Procurement (hereinafter referred to as Public Procurement Act) entered into force in Hungary on November 1, 2015, transposing the provisions of the 2014 Directive. It sets forth that the contract awarded following the public procurement procedure shall be performed by the successful tenderer, or grouping of tenderers, to whom the contract was awarded, or – if the contracting authority permits or requires the establishment of a business association – by the successful tenderer (tenderers) or the business association established and owned exclusively by the successful tenderer/tenderers (referred to as "project consortium"). However, exceptions can also be found. One of them is that the successful tenderer or tenderers to whom the contract is awarded may be replaced in consequence of its legal succession provided that (i) the successor entering the contract is not subject to any of the grounds for exclusion from the public procurement procedure, (ii) it is able to meet the eligibility criteria applied in public procurement procedures, in accordance with the provision applicable to tenderers and (iii) succession is not aimed at circumventing the application of the Public Procurement Act.

For the purposes of the Public Procurement Act, legal succession means (i) the restructuring, merger or division of the legal person, or (ii) if terminated by way of succession by any other means, or (iii) upon universal or partial succession where a business line functioning as an economic unit (including all contracts, assets and employees) is transferred, or (iv) if the contract is transferred upon the insolvency of the initial contractor and succession is not aimed at circumventing the application of the Public Procurement Act.

In all the aforementioned cases the successful tenderer may be replaced without launching a new public procurement procedure.

The provisions of the Public Procurement Act applies mostly to procurements and public contracts concluded following an award procedure, to design contests and to review procedures and pre-contractual remedies requested in connection with these or initiated ex officio commencing after the time of entry of force. However, the above quoted provisions apply also to the possibility of modification without a new procedure of procurements and public contracts concluded following an award procedure opened before the time of entry into force of the Public Procurement Act and to monitoring the amendment and fulfillment of such contracts, and the provisions of rules of review procedures applies to the related review procedures.

Comparing the Public Procurement Act to the 2014 Directive, we can draw the conclusion that the question of changes in contractor is dealt with in the Public Procurement Act among the provisions specifying the persons participating in the performance of the contract. Actually, the Hungarian text of the Public Procurement Act is even more unambiguous than Article 72 of the 2014 Directive because the terms used by the latter one such as "corporate restructuring, including takeover, merger, acquisition" are a bit vague and would deserve some explanation.

The category "legal succession" is set forth by various fields of Hungarian law in different ways. From the aspects of civil law (i) inheritance, (ii) assignment and (iii) transfer of contracts equally qualify as legal succession. From the aspect of corporate law, among others, merger, demerger and transformation mean legal succession. From the aspect of labor law, legal succession occurs when rights and obligations arising from employment relationships, existing at the time of transfer of an economic entity (organized grouping of material or other resources) by way of a legal transaction, are transferred to the transferee employer. This last regime stands closest to Public Procurement Act defining the transfer of a business line as legal succession. We can say that the term "legal succession" is interpreted in Hungarian law quite broadly.

Bearing in mind that the Public Procurement Act became effective on November 1, 2015, of course, no judicial practice has been developed. Nevertheless, the guidelines of the national public procurement authority also emphasizes that merely the change in contractor does not result in amendment to the contract. P

(R)evolution in Italian Real Estate Retail Market for Major Properties Leases?

A connection between the luxury retail sector and real estate markets has become increasingly evident in recent years.

Italian shopping high-streets have conquered world-wide consumers' confidence,[1] thus leading to an increase in the demand for the lease of commercial properties by fashion brands. In the Montenapoleone premium location fashion district in Milan or in the very well-known via Condotti in Rome, these brands are ready to pay from 7,000 up to 10,000 Euro per square meter. For a store in Corso Vittorio Emanuele in Milan or at Piazza di Spagna in Rome, they will pay comparable prices of Euro 3,000/5,000 to Euro 7,000.[2]

The juridical instruments used to regulate the utilization of stores in centers of Italian cities are, for the most part, commercial lease agreements. The relevant rules are contained mainly in law n. 392/78 (the "Law") whose features are – and interpretation has always been – protecting the lessee side, likewise a "weaker" party, against the possible "abuse of power" of landlords.

Therefore, as a way of example, the following clauses have been always considered null and void by the Italian case law (even in presence of an express waiver by the lessee):

1. clauses which are aimed at limiting the minimum duration of the lease;
2. clauses which are aimed at granting the lessor a higher rent with respect to that provided by the law;
3. clauses which are aimed at granting the lessor any other advantages in violation with the law.

However, the notion that "lessee side needs to be always protected" does not consider the economic power of the retailers involved. This "precautionary" legislative framework has been recently "upset" by law n. 164 of November 11, 2014. This law introduced – upon condition that the annual rent provided in the lease agreement exceeds Euro 250,000 – the "freedom of contract" principle, with the clear intention to approve criteria that can keep up with changing times.

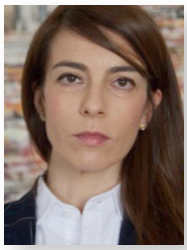
It is assumed, in fact, that if the lessee can bear an annual rent exceeding the above amount of Euro 250,000, it is no longer considered in a weak position and thus it can negotiate on equal terms with landlords.

After the reform, hence, the parties to property commercial lease contracts with a yearly rent higher than Euro 250,000, are entitled to agree terms and conditions derogating the provisions of the law, provided that such property leases do not refer to premises declared of historic interest by a decision issued by regions or municipalities (so called "*botteghe storiche*").[3]

As a way of example: parties might agree on the following terms, without risking the relevant clause to be declared void:

1. the lessee can be denied the pre-emption right[4] and/or the goodwill indemnification;[5]
2. the lessee can validly waive in advance the right of renewal of the lease contract;
3. the parties might freely agree the payment of sum, different from rent, as "entry fee;"
4. the parties might freely agree adjustments and step-rents not linked to index ISTAT and cap provided by the law.

Also if we consider how narrow Italian historical central high streets are, the reform seems nevertheless to embrace a relevant percentage of the fashion retail business.



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It is too early to say if the reform will take root, if the landlords will effectively increase their negotiating power because of this major flexibility in comparison with the past, or instead if the parties would prefer at the end to remain within the "old" law. At least, because of this new legal framework, the legal professionals are currently going through a quite radical change since they will now face proper negotiation sessions for all clauses of the lease agreement for major properties. We have no doubt that soon standard solutions like in the mergers and acquisitions sector will be developed, within the "shell" elaborated by Italian case law.

1 Needless to say that Italian streets offer a selection of clothing, jewelry, watches and beauty boutiques, as well as technology objects, and fabulous restaurants and gourmet shops.

2 2015 data provided by Reno S.r.l. - a service provider specialized in retail tenants representation and strategic consultancy - show that locations bordering center in Milan, such as at Via Dante, are about Euro 1,500 to Euro 2,500 Euro per sq. m., at corso Vercelli are about Euro 1,000 to Euro 1,500 per sq. m., at corso Buenos Aires are about Euro 1,000/mq to 2,000 per sq. m.; premium locations in North Italy cities are on average from Euro 1,500 to Euro 3,000 per sq.m., save for top premium location for Verona e Venezia, whose rents are obviously much more expensive, whilst Varese (Euro 1,000 to 2,000 per sq.m.), and Como (Euro 1,500 to 2,500 per sq.m.) are growing faster due to the favorable exchange rate with the Swiss Franc.

3 Agreements on major properties lease need to be proved in writing and in any case can not apply to contracts which are already in force at the date of conversion of the law n. 164/2014.

4 According to the law, the lessee has a pre-emption right in case the lessor sells the real estate or the lessor terminates the lease after the initial period and rents the real estate to a third party. The rule is not applicable in case the termination of the contract is attributable to the lessee and in case the commercial activity is not open to the public.

5 According to the law, the lessee has the right to receive an indemnification equal to 18 months of the last rent paid in case the termination of the contract is attributable to the lessor and the commercial activity is open to the public. The lessee has the right to receive a further indemnification equal to 18 months of the last rent paid, if in the new store the same/similar activity as that of the former lessee is being carried out and such new activity is started within one year from the termination of the former lease agreement.

Forming a Company in the Netherlands

The Netherlands is a perfect business location for foreign entrepreneurs (2,000 subsidiaries in Amsterdam, 140,000 jobs). It is the gateway to densely populated Western Europe and has a well-developed logistic and technical infrastructure. The highly skilled, multilingual and flexible work force, its favorable tax regulations for businesses, its stable political climate and its high standard of living make the Netherlands the ideal place to start a business.

Dutch law is based on the continental European civil law tradition and is – the Netherlands being a founding member of the European Union – highly influenced by the laws of the European Union. This means that the law is mostly written, but one should not underestimate the relevance of case law. Since the Dutch Civil Code dates from 1992 and is updated frequently with new case law, the Dutch law has an advanced legal system.

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Incorporating a Dutch Entity

The most common business entities in the Netherlands are the Besloten Vennootschap (BV: private company with limited liability) and the Naamloze Vennootschap (NV: public limited company). Both entities have legal personality, issue shares and provide limited liability for their shareholders. The main difference between NVs and BVs is that a BV can only issue registered shares, whereas as NV can issue both registered and (freely transferable) bearer shares. For this reason, only the shares of an NV can be listed on a stock exchange. Another important difference is the paid-in capital: a BV can be incorporated with a paid-in capital of only EUR 0.01. The incorporation of a NV requires a paid-in capital of EUR 45,000.

The first step in the incorporation process of a BV or NV is to draw up a deed of incorporation. The deed of incorporation is drawn up by a civil notary and includes the (initial) articles of association. The (minimum) costs for these deeds are approximately EUR 900 – EUR 1,050 (excluding 19 percent VAT and dues) for a standard entity and depending on the number of shareholders. The articles of association contain the regulations regarding the (internal) organization of the company and, among other things, the name and the purpose of the company. After the execution of the deed of incorporation and the fulfilment of the abovementioned minimum capital requirements, the BV or NV can be registered with the Chamber of Commerce. This registration finalizes the incorporation procedure. Before the incorporation procedure is finalized however, a BV or NV can already do business independently. In that case, the BV or NV has to register with the Chamber of Commerce as a "company in the process of incorporation." After the incorporation procedure has been finalized, the BV or NV will be able to confirm the transactions made during the process of incorporation. Without that confirmation the founders or the first directors appointed in the articles of the BV or NV are jointly and severally liable for potential damage arising from these transactions.

Finally, it is recommended to conduct a trade name search before the final registration of the new BV or NV. Because of intellectual property regulations, an earlier registration of the same or a similar trade name could result in having to change the name of the newly established company. This, of course, would not be a good start.

Structure of BVs and NVs

BVs and NVs have similar structures. However, the rules on BVs are less complex and provide more flexibility.

In this paragraph, the main powers and responsibilities of the different bodies within a BV or NV will be discussed.

Shareholders and the general meeting of shareholders

The shareholders are the owners of the company. For that reason all major decisions regarding the NV have to be taken or approved by the general meeting of shareholders (hereinafter: general meeting). Major decisions include, for example: amendments to the articles of association or issuing new shares. Shareholders have the right to vote in the general meeting. If they own at least 1 percent of the shares, they have the right to put items on the agenda of the general meeting. Other important rights of the general meeting include approving or dismissing of the company's financial statements and having the power to appoint and dismiss directors of the management board.

The articles of a BV may stipulate that a body of the company (for instance, the general meeting of shareholders) has the power to bindingly instruct the management board. However, if the aforementioned instruction conflicts with the interests of the BV, the management board may decide otherwise.

Management board

The primary responsibilities of the management board of both BV and NV are: the proper management of the company and the timely and accurate drawing up of its financial statements. The management board is in charge of determining the strategy and the (external) representation of the company. In this capacity, the management board and its individual members are authorized to bind the company. To what extent they are collectively or individually authorized to do so is often specified in the articles of association. Therefore, it is recommended to verify, prior to a transaction, whether a particular member is actually authorized to bind the company.

If a member of the management board has a conflict of interest with respect to a certain transaction, he or she is not allowed to participate in the decision-making process. In case the entire management board has a conflict of interest, the decision has to be taken by the general meeting, or, if existing, by the supervisory board or the non-executive directors, unless otherwise stipulated in the articles of association.

Supervisory board and non-executive directors

Dutch corporate law is known for its two-tier management system wherein supervisory directors take seat in a separate body, the supervisory board. Although BVs and NVs are only obliged in specific cases (i.e. when the BV or NV qualifies as a *structuurvennootschap*) to install a supervisory board, many entities do (voluntarily) have one. The supervisory board oversees and advises the management board independently and actively. The supervisory board is usually appointed by the general meeting of shareholders. Nowadays, a BV or NV can also opt for a "one-tier board model" consisting of only one board (thus no supervisory board) with both executive and non-executive directors.

Participation of employees

An entrepreneur who has 50 or more employees is obliged to establish a works council. The employees can participate in the decision-making process of the company through this works council. According to the law it has, depending on the subject at issue, the following rights: 1. the right to render advice, 2. the right of approval, and, 3. the right of information, consultation and initiative.

Financial statements and annual report

Every year, both BV and NV have to disclose their financial statements (jaarrekening). The financial statements of big and medium-sized companies are presented to the shareholders in an annual report (jaarverslag). Small companies only have to present their financial statements; they are not obliged to draw up an annual report.

Liability at BV/NV

After finalizing the incorporation, the shareholders are only liable for their share in the company. The managing directors are in principle not liable for debts of the company. They will only be liable if serious negligence by the managing directors has been proven. Then, directors may be held jointly and severally liable for the damage the company suffers. In case of bankruptcy, this may also apply to the damage the creditors of the company suffer.

Other Options

Foreign entrepreneurs can also establish a branch office in the Netherlands without having to incorporate a Dutch legal entity. Or they can enter the Dutch market by appointing a distributor, an agent or a franchisee.

Other Important Issues

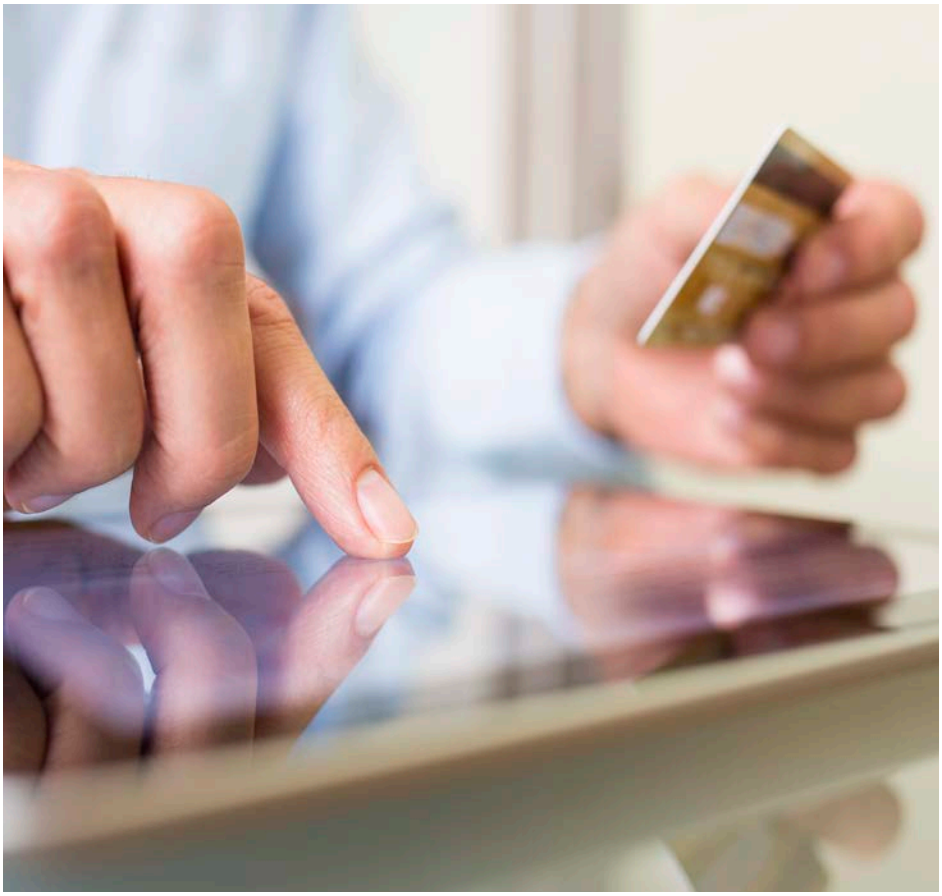
As a foreign employer in the Netherlands, it is important to know that there are many legal provisions that protect employees both Dutch and foreign. Employees are also protected if the company they work for is transferred to another country.

Moreover, a foreign entrepreneur might want to lease business accommodation in the Netherlands. Generally, the lease period is five years with an option to renew the lease for another term of five years. As this is a complex matter, it is not possible to provide all the specific legal lease pitfalls within the scope of this article.

Conclusion

Although Dutch law can sometimes be far-reaching, the Netherlands is an appealing place to conduct business, particularly with a qualified lawyer steering you through the rules and regulations of Dutch law. P

Boosting E-commerce in Europe



Buying or selling online to or from other European Union countries is still often too complicated and expensive. E-commerce in Europe suffers from geo-discrimination: retailers discriminate against consumers by establishing different prices depending on their location or by making it more expensive to deliver to certain EU countries. In addition, the legal fragmentation of consumer rights and their enforcement mechanisms are additional obstacles towards unlocking the full potential of what a European single e-commerce market can be.

Moving from 28 national digital markets to a single one is the aim of the recent European Commission's proposal on boosting e-commerce in the EU. The strategy for reaching a true single digital market is based on three pillars:

1. Improving access for consumers and businesses to digital goods and services across Europe;
2. Creating the right conditions and a level playing field for digital networks and innovative services to flourish;
3. Maximizing the growth potential of the digital economy.

The Commission's aim is a very ambitious one and involves revising and improving regulation of many complex areas that still need to be polished and updated based upon emerging forms of digital commerce.

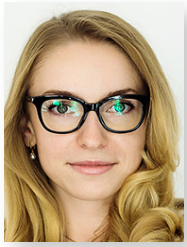
The Commission approaches the three pillars in a comprehensive manner, with complex proposals that aim to promote cooperation between the national authorities and mitigate the existing differences in the national regulations, reaching a harmonized digital market.

Let's take a look at some of the proposals:

1. Fighting unjustified geo-blocking

Whether it is denying consumers access to a website based on their location or re-routing them to a local store with different prices, the proposal seeks to put an end to such discriminatory practices used by online sellers. The initiative seeks to reassure that European consumers have online access to goods and services on an equal basis regardless of their location or nationality. The measures will involve both access to prices and sales and methods of payment.

As a result of the Commission's proposal, sellers will have limited possibilities for restricting access to the goods and services offered online based on national rules to protect public order.



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Nevertheless, an additional burden on small retailers will be avoided by establishing a national value-added tax threshold for exempting small businesses from certain provisions. The proposed regulation will not impose an obligation to deliver across the EU.

The regulation is expected to take effect in 2017, although some of its parts, such as non-discrimination principles, will apply later, as of July 1, 2018, giving extra time to the service providers to prepare for the changes.

2. Improving the enforcement of consumer rules

This initiative applies to both physical goods and digital content bought online and involves creating EU contract rules and consumer protection. These measures are vital for increasing consumers' trust of e-commerce.

Consumer protection enforcement mechanisms will be improved by revising the Consumer Protection Cooperation (CPC) Regulation established in 2007. This is an essential step to support national consumer authorities addressing breaches of consumer rules in more than one country. National consumer authorities will be better able to halt unlawful practices and discover the identity of the responsible trader, which is often hidden through a complex online structure.

National enforcement authorities will be provided, among others, with these powers:

- Ordering the shutdown of websites or social media accounts containing scams;
- Requesting information from domain registrars, internet service providers and banks to track financial flows and find out the identity of those behind bad practices.

These changes intend to facilitate the collaboration of the enforcement authorities in the EU member states in order to coordinate a common position addressing unlawful online practices and implementing enforcement measures, if necessary, to change the harmful practices or compensate the affected consumers.

3. Mitigating the existing legal fragmentation of contract laws

The existing legal fragmentation in the area of consumer contract law is not only detrimental to consumers' trust, but also results in high costs for businesses – especially small and medium-sized enterprises (SMEs) which must adjust their practices to each particular market in which they intend to operate.

The Commission has presented two proposals for tackling the existing legal fragmentation in the areas of online sales of good and supply of digital content. The key points for harmonizing and improving consumer protection are:

- **Reversal of the burden of proof** – the consumer will be able to ask for a remedy without having to prove that the defect existed at the time of delivery throughout the two-year guarantee period.
- **Establishing a single set of European rules** – businesses should be able to sell goods and digital content online based on the same key contract rules for any EU country. In this regard, the proposals related to copyright and digital contract rules are the first initiatives for exploiting the full potential of the digital single market.

Taking into consideration the divergences existing between the national regulations and sometimes even the absence of national rules related to particular online commerce issues, this harmonization at European level should become a game-changing factor for boosting e-commerce

4. Improving cross-border parcel deliveries

One of the biggest obstacles affecting European e-commerce is the high cost of the cross-border parcel delivery. By imposing more transparency on actual cross-border delivery prices, which nowadays do not always reflect the underlying costs involved, the Commission aims to encourage consumers to be able to choose from a wider range of products and e-retailers.

The main aspects of the proposed regulation for improving the cross-border parcel delivery are the following:

- Increasing the control over the parcel delivery service providers.
- Improving price transparency.
- Encouraging competition in the cross-border parcel delivery market.

The proposed regulation will be applicable to delivery service providers who meet the following criteria:

- Above 50 employees or active in several member states.
- Involved in clearance, sorting or distribution of parcels. Transport alone, if not provided together with one of these activities, is not considered to be a parcel delivery service.
- Provides the universal postal service, as set out in the Postal Services Directive.

Such providers will be obliged to submit information regarding the prices of certain services, the services offered and conditions of sale, complaints procedures and annual turnover to the National Regulatory Authorities (NRAs).

Using the submitted information, the NRAs will be responsible for collecting the prices of certain services from universal service providers and assessing their affordability, encouraging price transparency and competitiveness.

According to the Commission, at this stage it doesn't intend to regulate or establish a cap on delivery prices. After taking stock of progress made in 2019, the Commission will asses if further measures are necessary.

The proposed initiatives are interrelated and reinforce each other, affording a more solid ground for the development of the single digital market. But we believe that these proposals will need to be corrected and polished based on the results of their implementation and the obstacles they will most likely face. Overall, the strategy for the European single digital market is very ambitious, but the potential profit is worth the effort, since there is no doubt that e-commerce is the future of the world's economy.

The Brazilian Anticorruption Act and the Importance of a Compliance Program

Brazil has recently been featured in the headlines of the world press for numerous cases of corruption.

Brazilian Federal Law 12,846 was enacted August 1, 2013 (Brazilian Anticorruption Act). It was a result of the country's international commitments assumed in the late 1990s and early 2000s, and not as a response from the Brazilian authorities to the great anticorruption protests of 2013.

In 1997, Brazil signed the Convention of the Organization for Economic Cooperation and Development (OECD), better known as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

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In 2003, Brazil signed the United Nations Convention Against Corruption, in which it committed to criminalize corruption (domestic and transnational) and to enact a law establishing administrative, civil and/or criminal liability of legal entities regarding corruption acts.

The Brazilian Anticorruption Act provides for the strict administrative and civil liability of legal entities for acts committed against Brazilian public and foreign administration.

According to the Act, the legal entities shall be strictly liable, in both administrative and civil spheres, for the practice of the harmful acts set forth therein in their exclusive or non-exclusive interest or benefit.

There is no need to prove the fault of the legal entity. Just the link between the conduct of the legal entity (or any third party acting on its behalf or benefit) and any of the harmful acts provided in the Brazilian Anticorruption Act is enough. Article 5 of the Brazilian Anticorruption Act provides a list of conduct considered acts of corruption. Such acts are:

1. to promise, offer or give, directly or indirectly, any undue advantage to a public official or a third party related thereto;
2. proven financing, funding, sponsoring or otherwise subsidized practice of torts described therein;
3. proven use of a third party, either an individual or legal entity, to conceal or disguise their real interests or the identity of the beneficiaries of the actions taken;
4. regarding public bids and contracts:
   a) to frustrate or defraud, by means of collusion or any other expedient, the competitive nature of a public bid;
   b) to prevent, hinder or defraud the performance of any act within the scope of a public bid;
   c) to remove or seek the removal of a bidder, by means of fraud or by offering advantage of any kind;
   d) to defraud a public bid or the contract resulting thereof;
   e) to create, fraudulently or irregularly, a legal entity for the purpose of participating in a public bid or entering into administrative contracts;
   f) to gain undue advantage or benefit, in a fraudulent manner, from amendments or extensions of contracts entered into with the public administration, without authorization provided either by the law or by the invitation to bid or respective contractual instruments; or
   g) to manipulate or defraud the economic and financial balance of the contracts entered into with the public administration;

5. to hinder the activities related to the investigation or inspection by public agencies, entities or officials, or intervene in the performance of their duties, including in the context of regulatory agencies and agencies in charge of supervising the national financial system.

Along with the obligation of full indemnification for damages caused, the legal entity, in the judicial sphere, can also suffer (i) forfeiture of property, rights or amounts obtained from the infraction; (ii) partial suspension or interdiction of the legal entity's activities; (iii) compulsory dissolution of the legal entity; and/or (iv) prohibition of receiving incentives, subsidies, grants, donations or loans from public agencies or entities and public financial institutions or from financial institutions controlled by the government. Additionally, the offending legal entity is also subject, in the administrative sphere, to the following sanctions:

1. a fine in an amount ranging from 0.1 percent to 20 percent of the gross revenues earned in the financial year preceding the financial year in which the administrative proceeding was commenced, excluding taxes, which fine shall never be less than the advantage obtained, whenever such advantage may be estimated; and
2. extraordinary publication of the unfavorable decision.

If it is not possible to adopt the legal entity's gross revenue criteria, the fine shall range from R$ 6,000.00 (six thousand reais) to R$ 60,000,000.00 (60 million reais)[1].

The Importance of a Compliance Program

According to Article 7 of the Brazilian Anticorruption Act, the existence of a compliance program shall be considered a mitigator in the application of the sanctions provided therein.

The parameters of evaluation of a compliance program for the purposes of fine calculation, as well as the criteria of fine calculation (among other provisions) are set forth in the Decree 8420 of March 18, 2015 ("Decree 8420") which regulates the Brazilian Anticorruption Act.

The Decree 8420 provides that the implementation and maintenance of an effective compliance program will be a mitigating factor when calculating fines against the offending legal entity.

In accordance with Article 18 of Decree 8420, the applicable fine imposed may be reduced in an amount ranging from 1 percent to 4 percent of the fine amount if the offending legal entity proves the existence and implementation of an effective compliance program, which shall be evaluated in accordance with the parameters set forth in Chapter IV of the Decree 8420.

Article 42 of Decree 8420 establishes that a compliance program shall be considered as effective if it fulfills the following parameters:

1. commitment and support of senior management (Tone at the Top);
2. written standards and codes of ethics and conduct for employees, managers, and third-party vendors;
3. periodic trainings about the compliance program;
4. periodic risk assessment in order to continually improve the compliance program;
5. accurate accounting records fully reflecting the transactions of the legal entity;
6. internal controls assuring the reliability of legal entity's financial statements and reports;
7. specific procedures intended to prevent fraud and corruption in the context of bidding for government contracts or in any interaction with the public sector;
8. independence, structure and authority of the compliance department to implement the compliance program and to monitor its enforcement;
9. irregularities reporting channels, open and widely disseminated to employees and third parties, and mechanisms for the protection of good faith whistleblowers;
10. disciplinary measures for violations of the compliance program;
11. procedures to ensure the prompt interruption of irregularities or violations and timely remediation of the damages;
12. adequate due diligence in mergers, acquisitions, corporate restructurings and in dealings with third parties;
13. check, during mergers, acquisitions and corporate restructuring, the practice of irregularities or offenses or the existence of vulnerabilities in legal entities involved;
14. continuous monitoring of the compliance program; and
15. transparency of the legal entity regarding donations to candidates and political parties.

An effective compliance program mitigates the chances of corruption act practices and its implementation costs are far cheaper than the damages arising from the commitment of corruption acts.

Brazilian companies are changing their perspective of a compliance program, facing it as a competitive advantage to carry out their business rather than a cost. P

1 On July 29, the Forex Exchange Rate is US$ 1.00 = R$ 3.23. Therefore, at such rate, the fine shall range from US$ 1,857.59 to US$ 18,575,851.39.

New Rules About Control Situations in Sole Shareholders Companies

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Just 20 years ago, Colombia introduced to its internal legislation the figure of control and/or group situations for local corporations. Effectively, under article 26 of law 222 of 1995, there is a control situation when a corporation is under subordination of another, including physical people, whether directly or through third parties.[1] Meanwhile, it is considered a group situation when there is unity regarding the direction and purpose of both the controlled and controller corporations – and/or physical people when they exercise control under legal circumstances.[2] According to Francisco Reyes Villamizar,[3] the inclusion of this provision is a step forward in updating local legislation to the current challenges of corporate law.

Talking about the scenarios in which it is possible to have a control situation, the article included some presumptions of subordination, as follows:

1. There will be control when the supposed controller owns – directly or through third parties – more than 50 percent of the shares of the controlled corporation;
2. There will be control when the controller, directly or indirectly, is able to issue as many votes as required for taking decisions within the shareholder assembly or in cases where the controller has enough participation to appoint the majority of the members of the board of directors;
3. Last, but no least, there will be control when the controller, through business with the controlled, is able to exercise dominant influence over the decisions of the later;

The supposed controller or controlled corporations are entitled to challenge, before the Corporations Superintendence,

any of these presumptions. If the authority finds the explanations of the companies to be acceptable, they will be relieved of the duty to inform the general public through the Commercial Registry, the existence of the control and/or group situations. Failure to fulfill the obligation of declaring the existence of control and/or group situations results in fines[4] for the controller until COP 138.000.000 or USD 49,300 approximately.

According to local provision, the following are the effects of the recognition, voluntary or declaration, by the Corporation superintendence, of a control situation.

The effects of the situation of control, according to law 222 of 1995, are:

- Obligation to register the situation of control in the trade registry;[5]
- Obligation to consolidate the financial statements;[6]
- Prohibition of reciprocal participation of capitals between parent companies and subordinates.[7]
- Extension of liability of the parent companies: this extension of liability is given in a subsidiary manner, when the following two scenarios occur: (i) in the cases of participation of the subordinated company and (ii) liability on the hypothesis of mandatory liquidation of the subordinated company, when fraud by the parent company is verified.[8]

After the inclusion of control and group provisions in 1995, one of the biggest changes of Colombian legislation occurred in 2008, when the Congress issued law 1258 of 2008, which created the so-called "Sociedades por Acciones Simplificadas" or S.A.S. As happened with law 222 of 1995, this new provision represented another step forward in updating the Colombian legal system regarding corporate law rules. For the first time in history, it was possible to incorporate sole shareholders corporations. The importance of the new rules can be measured if we consider that after one year of the existence of the law, 27.800 S.A.S. was incorporated and in the following years, until 2012, 160.000 S.A.S. was incorporated.[9]

In addition to the possibility of incorporating an S.A.S. with a sole shareholder, there are other benefits for its use, such as:

1. The bylaws of the S.A.S. can be contained in a private document; for other kinds of corporations it must be contained in a public deed;
2. It is not necessary to create a board of directors; for other kinds of corporations it is mandatory to have a board of directors;
3. Amendments of the bylaws can be contained in a private document;
4. In general, it is not mandatory to appoint an statutory auditor for the companies;

As expected, considering the advantages of the S.A.S., considering its advantages, the S.A.S. has been fundamental to the efforts of local government to eradicate, if possible, informality within the local economy.

Now, due to the indiscriminate use of this kind of corporation, new issues have arisen, especially in matters related to shareholders liability related to activities performed through an S.A.S. Although not initially considered, the regulation of control and groups is at the center of the stage of the Corporations Superintendence. Recent decisions of the control organism show how the already explained regime allows that organism to define boundaries in this regard using control provisions to understand, completely, the corporate situation of a group of corporations.

In this regard, once law 1258 was issued no questions were asked about the application of control regulations to the S.A.S., considering that the latest was created, precisely, as a flexible and simple tool to fight against informality allowing entrepreneurs to incorporate corporations in an easy way. In this sense, arguably for a sector of lawyers and authorities, the application of the provisions contained in law 222 of 1995 will affect entrepreneurs because they will be responsible to fulfil all the duties already explained, making the use of this kind of corporations much less attractive, because it implies loosing flexibility. Although attractive, this argument was not considered for the Corporate Superintendence in the analysis of specific cases.

In effect, after a deep study, the Corporate Superintendence found that all the duties applicable to controller companies where there is a plural number of shareholders, are also applicable to sole shareholders in the S.A.S. for two main reasons: (i) they represent a mechanism to really understand the dynamics of a related group of corporations; and (ii) there is no legal exception to the applicability of the law 222 of 1995 provisions.[10] To this point, it is not important if that provision was issued before the one by which the S.A.S. appeared; what is really important is if it is possible to verify the existence of one of the presumptions already explained.

The content of the latest decisions of the Corporations Superintendence open a new chapter not only for the sole shareholders, but also for the Corporations Superintendence. The former now have to bear in mind the new duties they must comply with, while the later must find a proper and efficient way to enforce the already explained provisions, without affecting the process of formalization of the economy that already begun. P

1 This was confirmed by the State Council, Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Primera. Consejera ponente: Olga Inés Navarrete Barrero. Sentencia del 17 de mayo de 2002, radicado: 25000-23-24-000-2001-0388-01(7342), and the Constitutional Court, Sentencia C – 510 de 1997;

2 Article 28 of law 22 of 1995

3 REYES VILLAMIZAR, Francisco, derecho societario, Tomo II, Editorial Temis, 2009

4 Article 83, Num 3, law 222 of 1995;

5 Article 30 of the law 222 of 1995;

6 Article 35 of the law 222 of 1995;

7 Article 32 of the law 22 of 1995

8 Article 61 of the law 1116 of 2006

9 http://www.portafolio.co/negocios/empresas/colombia-cuenta-160-000-s-s-creadas-104570. Accessed on 13Th of July of 2016

10 Corporate Superintendence, Resolución 2015 – 01 - 144502

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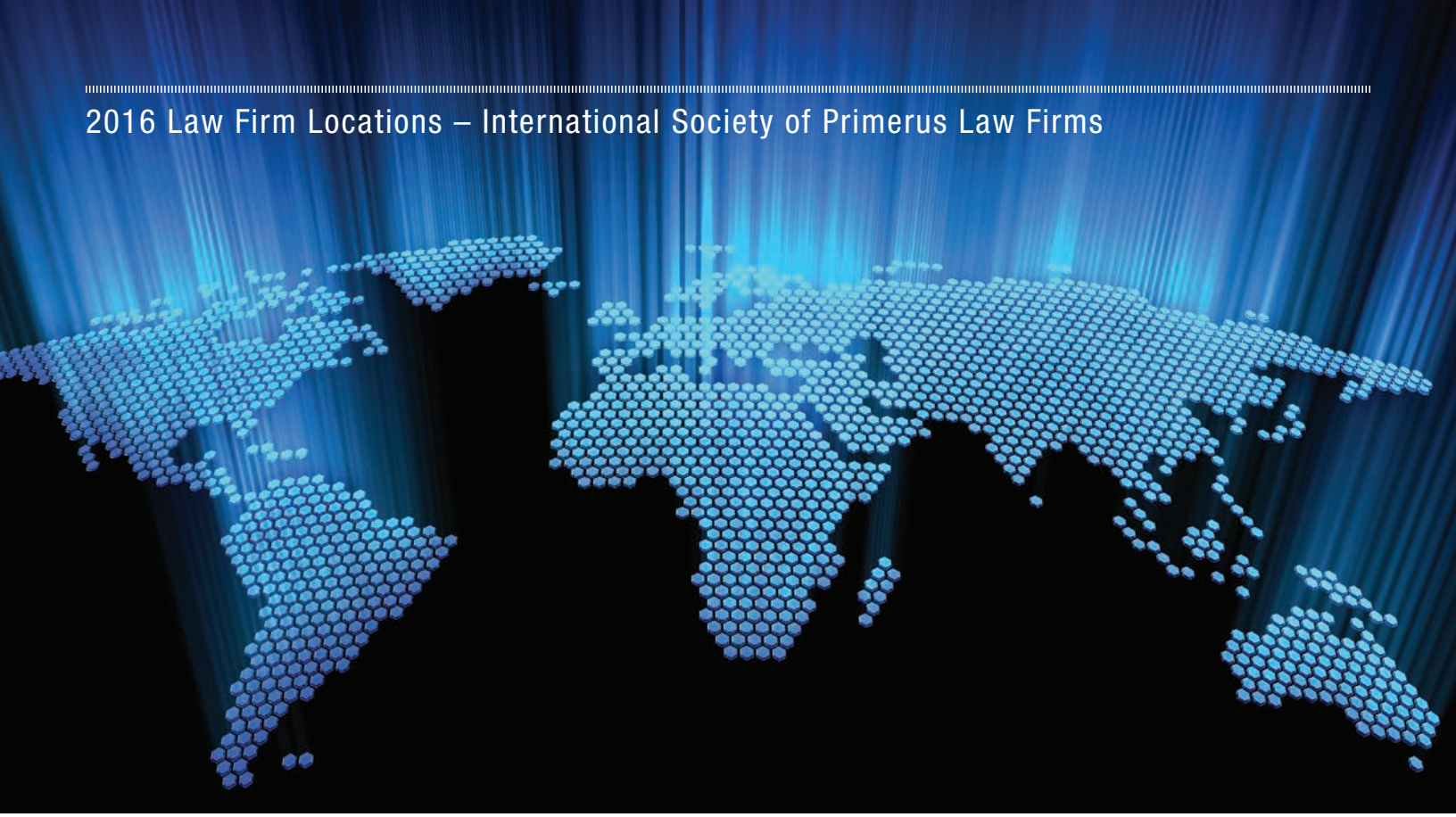

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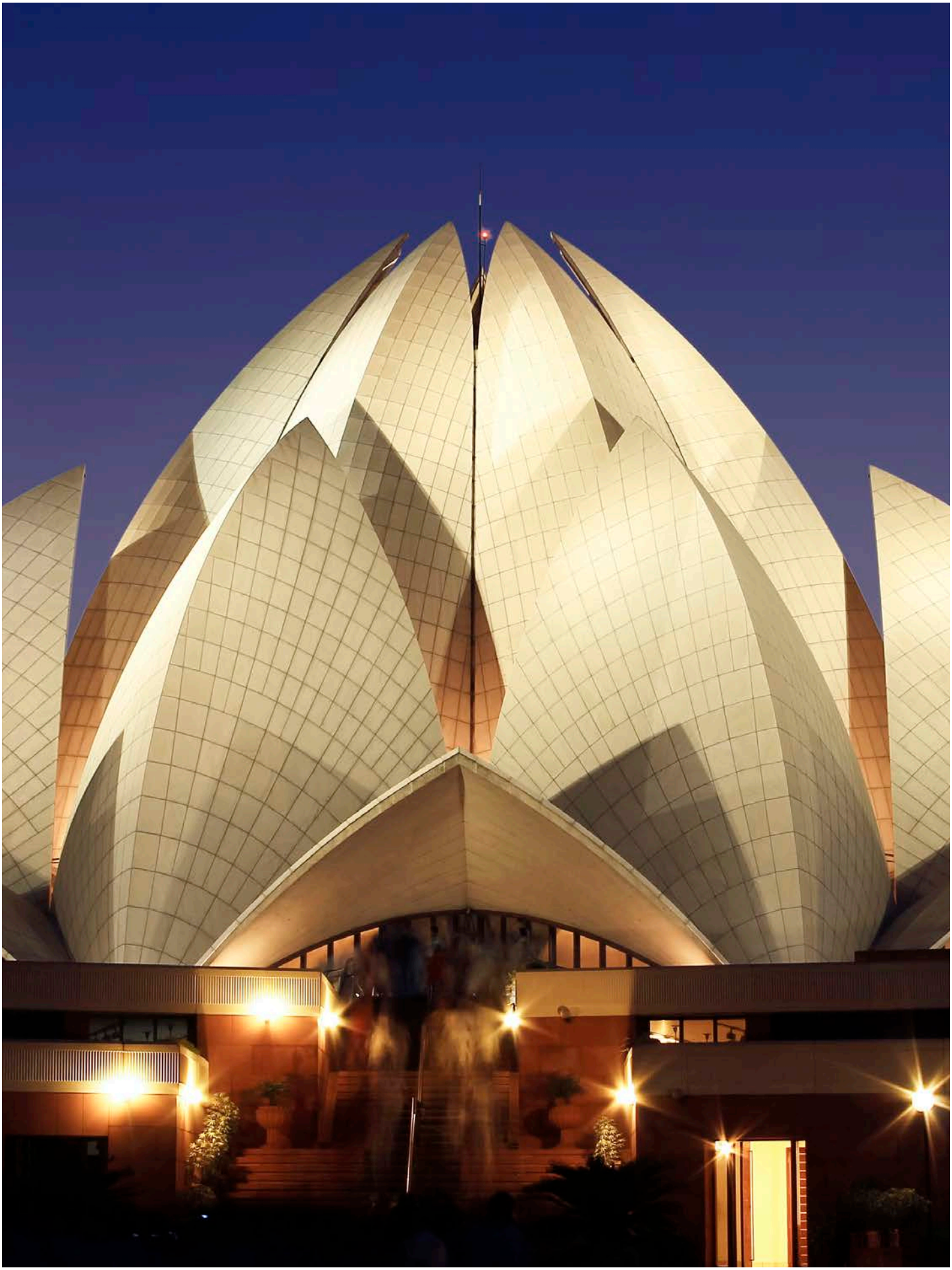

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Primerus Business Law Institute (PBLI)

Collins & Lacy Collects Precious Cargo for Foster Children

Seven out of 10 children who enter foster care through the South Carolina Youth Advocate Program (SCYAP) have nothing but the clothes on their back. That's a statistic that makes Christian Boesl, shareholder with Primerus member firm Collins & Lacy, a little emotional. So Boesl decided to do something about it.

For two weeks in May, the offices of Collins & Lacy, P.C., located in South Carolina, partnered with SCYAP and hosted a community collection drive for the organization's Precious Cargo program. The program provides packed duffle bags to foster children the day they enter the organization's care.

In the end, they collected enough for more than 50 duffle bags loaded with basic toiletries, school supplies and comfort items such as a stuffed animal and blanket.

"It's really easy to get choked up about the initiative. As lawyers we deal with conflict on an almost daily basis," Boesl said. "This is a time when we're not dealing with conflict. We're advocating for peace for these children. It's refreshing to have a break from the conflict."

Boesl said many children entering foster care are pulled from their home at night to escape a dangerous situation. They often cannot bring anything with them.

"When the children receive these bags, they get something that's unique and special to them," he said.

Gail Cole, development liaison with SCYAP, said the organization distributes over 400 Precious Cargo bags to foster children every year. The bags are prepared for specific age groups and separated by male and female, so they are personalized for each child.

"It is a special moment when they receive their bag," she said. "The stuffed animal is immediately taken out for a hug and then the child usually asks if all of this is really just for them. They just can't believe it, and often it is the first time we have seen them smile all day."

SCYAP is a child-placing and family serving non-profit organization that provides treatment, advocacy and services to children and families dealing with serious emotional, behavioral, psychological and/or development issues.

Collins & Lacy has done legal work for SCYAP, so Boesl and others learned about their important work.

"I could really see the special needs of the children who come through the doors," Boesl said.
"The plight they find themselves in really tugs on the heartstrings. Having four children of my own, when you see the crisis these children are in and how they are victims of circumstances beyond their control, it is just so compelling to want to help them."

In the end, the firm collected enough for more than 50 duffle bags loaded with basic toiletries, school supplies and comfort items such as a stuffed animal and blanket.

2016-2017 Calendar of Events

Scan to learn more about Primerus.

October 13-16, 2016 – Primerus Global Conference
Washington, District of Columbia

October 16-19, 2016 – Association of Corporate Counsel Annual Meeting
San Francisco, California

November 3-4, 2016 – Primerus Defense Institute Insurance Coverage and Bad Faith Seminar
Chicago, Illinois

January 27, 2017 – Primerus Western Regional Meeting
San Francisco, California

February 8-10, 2017 – Primerus Young Lawyers Section Boot Camp
Las Vegas, Nevada

February 16-17, 2017 – Primerus Defense Institute Transportation Seminar
San Antonio, Texas

March 1-4, 2017 – Primerus Personal Injury Institute Winter Conference
Tucson, Arizona

April 20-23, 2017 – Primerus Defense Institute Convocation
Naples, Florida

There are other events for 2016 and 2017 still being planned which do not appear on this list. For updates please visit the Primerus events calendar at 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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